

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK,

- against -

ANTONIO MALLET,

Movant-Defendant.

NOTICE OF MOTION

Ind. No. 7180/96

PLEASE TAKE NOTICE that upon the annexed Affirmation of David B. Shanies (with attached exhibits), the annexed Memorandum of Law, and all prior proceedings herein, the undersigned will move this Court, on a day and time set by the Clerk of Court, for an order vacating Movant-Defendant Antonio Mallet's conviction under Criminal Procedure Law ("CPL") § 440.10 or, in the alternative, granting a hearing under CPL § 440.30, together with such other relief as the Court deems just and proper.

Dated: New York, New York
October 15, 2019

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By: 

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**MEMORANDUM OF LAW IN SUPPORT OF ANTONIO MALLET'S
MOTION TO VACATE HIS JUDGMENT OF CONVICTION UNDER CPL § 440.10**

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PRELIMINARY STATEMENT

Antonio Mallet was wrongfully convicted of the 1996 murder of Michael Ledeatte, a crime of which he is, and always has been, innocent. Mr. Mallet's conviction arose entirely from the testimony of a single eyewitness, who falsely identified Mr. Mallet as a result of threats, coercion, and physical violence by the police. Contrary to his trial testimony, the witness could not identify the shooter and saw the shooting under conditions that made an identification impossible. Police investigators hid from Mr. Mallet and his attorney the facts that they used violence, threats, and coercion to contrive the eyewitness's false testimony, as well as the numerous exculpatory statements the eyewitness made before finally conforming his narrative to what police detectives forced on him.

Mr. Mallet has maintained his innocence for more than 23 years. At trial, he told the Court categorically: "I am innocent. That is it. [My] case has to be proven. Until then I have to wait it out. That is it. I am innocent." (Ex. A, Trial Transcript at Bates 494:13-15.)¹ Even the trial judge noted the "tragic" fact that although the guilty verdict was legally sufficient, Mr. Mallet's guilt was not certain: "I don't know if he is guilty, having done this too long I just don't know" (Mallet440-00497.) Mr. Mallet was sentenced to 20-years-to-life in prison. (*Id.*) Mr. Mallet has tirelessly endeavored to prove his innocence and challenge his conviction. Mr. Mallet was released from prison

1. Because of inconsistent numbering on the transcripts of past proceedings in this case, counsel has added Bates numbering to the bottoms of the pages. Mr. Mallet refers to the Bates numbering in referring to the trial transcript.

on parole in April 2019, after twenty years in prison. He is currently serving a lifetime parole sentence.

Mr. Mallet now has the evidence necessary to prove his innocence. In a sworn affidavit, the sole eyewitness, Gregory Walker, has recanted his testimony, stating for the first time that his “identification” was the product of violent police conduct, threats, and misinformation, leading him to name Mr. Mallet. Mr. Walker did not, in fact, see Mr. Mallet shoot Michael Ledeatte. Instead, he told the police whatever they needed to hear in order to be able to leave the precinct after hours of abusive interrogation. (Ex. B, Affidavit of Gregory Walker (hereinafter “Walker Aff.”), dated July 6, 2019, ¶ 39.) Mr. Walker maintained the lie because the police threatened him with jail time for his own criminal activity and lied to him, telling him that Mr. Mallet was a dangerous criminal who intended to hurt or even kill him. (*Id.* at ¶¶ 54-55.)

Not only has Mr. Walker (who is represented by counsel) recanted his identification and trial testimony, but he has painstakingly recounted the disturbing details of his interrogation. Those details include threats of arrest and prosecution, physical violence, and numerous false statements by police. Moreover, an expert report by one of the nation’s foremost authorities on memory and perception has confirmed what Mr. Walker told police from the outset: he was unable to identify the person who shot Mr. Ledeatte.

The falsity of Mr. Walker’s testimony and the suppression of exculpatory and impeachment information concerning Mr. Walker’s statements could not have been more crucial. Mr. Walker’s testimony was the *only* evidence offered at trial that

suggested Mr. Mallet was responsible for killing Mr. Ledeatte. No DNA, forensic, or ballistics evidence was ever presented. No circumstantial evidence linked Mr. Mallet to the crime. No plausible motive was advanced. Mr. Walker's false identification formed the entirety of the case against Mr. Mallet.

Mr. Walker's affidavit is corroborated by additional evidence. Kelvin Rosado, an acquaintance of both Mr. Mallet's and Mr. Ledeatte's who did not testify at trial, has signed an affidavit describing efforts by the lead case detective to coerce him to make false inculpatory statements against Mr. Mallet. (Ex. C, Affidavit of Kelvin Rosado.) Mr. Rosado's sworn statement further demonstrates that the police officers responsible for this case were willing to use any means necessary to get the testimony they wanted, regardless of its truth. Finally, Dr. Geoffrey Loftus, one of the country's leading experts in the field of perception and memory, has submitted an expert report on behalf of Mr. Mallet (including scientific evidence that did not exist at the time of trial), opining that Mr. Walker could not have perceived anyone (including, of course, Mr. Mallet) under the conditions surrounding his purported identification. (Ex. K, Expert Report of Geoffrey Loftus.) This evidence corroborates Mr. Walker's sworn statement that he could not actually identify the person who shot Mr. Ledeatte in 1996.

Mr. Walker's affidavit is new evidence under Criminal Procedure Law ("CPL") § 440.10 that, together with the other submissions accompanying this motion, requires vacatur of Mr. Mallet's conviction – or, should the prosecution dispute the material facts, an evidentiary hearing pursuant to CPL § 440.30. Because Mr. Walker's recent sworn statements undermine the only basis for Mr. Mallet's conviction, Mr.

Mallet has met his burden under § 440.10, entitling him to vacatur of the conviction.

STATEMENT OF FACTS

A. THE ARREST AND INTERROGATION OF GREGORY WALKER

In the early morning of September 23, 1996, at around 3 a.m., Mr. Walker was driving his car behind Mr. Ledeatte's car. (Walker Aff. ¶ 11, Mallet440-00084:18-22.) Mr. Ledeatte was driving a stolen 1993 Lexus GS 300, which, to Mr. Walker's understanding, he intended to deliver to a buyer that evening. Mr. Walker's role was to follow close behind Mr. Ledeatte, and to drive him home after he delivered the car. (Walker Aff. ¶ 8; Mallet440-00088:3-10.) The two men drove to "Waldbaum's," a Bronx supermarket on Gun Hill Road, to meet who Mr. Walker understood would be the buyer of the stolen car. (Mallet440-0092:2-8.) After arriving at the Waldbaum's, Mr. Walker parked his car about 150 feet away from Mr. Ledeatte and the stolen car, and sat there, waiting. (Walker Aff. ¶ 13, Mallet440-00104:13-15.) Mr. Walker saw two men approach Mr. Ledeatte in the stolen car. (Walker Aff. ¶¶ 12, 14.) After what appeared to be a brief interaction, Mr. Walker saw one of the men lean toward the stolen car where Mr. Ledeatte was sitting. A moment later, Mr. Walker heard a single gunshot. One of the men had shot Mr. Ledeatte, killing him. (Walker Aff. ¶¶ 15-16.)

After the perpetrators fled in their own car, Mr. Walker drove his car to where Mr. Ledeatte was and found his friend mortally wounded. (Walker Aff. ¶ 17, Mallet440-00087:2-3.) At around 3:00 a.m., Walker called 911 from a pay phone outside Waldbaum's supermarket; minutes later, the police found him at the scene. (Walker Aff. ¶¶ 18-19; Mallet440-00084:3-5.) The police, suspecting Mr. Walker of having some

role in the homicide, seized Mr. Walker's car and took him into custody. (Walker Aff. ¶ 20; Mallet440-00117:9-23.) Mr. Walker was taken to a police station for questioning. (Walker Aff. ¶ 19-20.) The police locked Mr. Walker in a room, handcuffed him, and interrogated him throughout nineteen hours of custody. (Mallet440-00218:20-19:2; Walker Aff. ¶¶ 21-22.)

Also in the early morning hours, NYPD Detective Milian went to the emergency room, where he spoke to the emergency room doctor, Dr. Wexson. Dr. Wexson, who observed two bullet holes in Mr. Ledeatte's head, erroneously informed the detective that Mr. Ledeatte had been shot twice. (Ex. D, Milian DD-5 of September 24, 1996.)

In his first interview with the police, shortly after 3:00 a.m. on September 24, 1996, Mr. Walker claimed that Mr. Ledeatte called him and asked him to accompany him to the Waldbaum's parking lot. Mr. Walker initially claimed that he found Mr. Ledeatte shot upon arriving at the location (*i.e.*, he did not witness the shooting). (Ex. E, Gregory Walker Statement at 3:00 a.m.) Mr. Walker repeated that account to a different detective at 5:35 a.m., and then signed a written statement to that effect. (Ex. F, Gregory Walker Statement at 5:35 a.m.)

By the next evening, Mr. Walker gave two, more detailed, statements to the lead investigator, Detective Nieves. In one written statement, Mr. Walker admitted that he had "backed up" Mr. Ledeatte in the past on a number of stolen car sales – the same thing he was doing on the night of the killing. (Ex. G, Gregory Walker Statement at 8:30 p.m. on September 24, 1996.) In that statement, Mr. Walker did not yet admit

that he saw the shooting, but he did mention Mr. Mallet – telling detectives that he saw Mr. Ledeatte speaking to Mr. Mallet at a car scrap yard earlier on the day of the shooting. (*Id.*) At that point, the detectives became focused on Mr. Mallet, insisted that he must have been the buyer who Mr. Ledeatte planned to meet that night, and began to exert extreme pressure on Mr. Walker to admit that he witnessed the shooting and recognized Mr. Mallet as the shooter. (Walker Aff. ¶¶ 34-36.)

Mr. Walker made yet another written statement, also purportedly at 8:30 p.m. In that statement, Mr. Walker stated that the prospective buyer of the stolen Lexus GS 300 was “Celo” (a nickname for Mr. Mallet), whom “Mike met up with” at Alpine Motors on Thursday, September 19, 1996. In that statement, Mr. Walker still denied having witnessed the shooting. (Ex. H, Gregory Walker Statement to Police at 8:30 p.m.) He continued to maintain that when he arrived, Ledeatte had been shot and all he saw was a “small white car driving from the scene.” (*Id.*)

None of Mr. Walker’s previous statements satisfied Detective Nieves, who insisted that Mr. Mallet was the intended buyer of the stolen car and also the man who shot Mr. Ledeatte. Detective Nieves and his partner became increasingly threatening to Mr. Walker, eventually telling him, after hours of custodial interrogation, that he was going to identify the perpetrator or he “was not going to walk out of the police station.” (Walker Aff. ¶ 27.) The detectives told Mr. Walker that he “was going to go down for the stolen car,” and implied that he might have been involved in Mr. Ledeatte’s murder. (*Id.* at ¶ 28.) Detectives yelled at Mr. Walker, cursed at him, and threatened to send him to jail. (*Id.* at ¶30.) At one point, a detective grabbed Mr. Walker, pulled him out of the

chair he was sitting in, and slammed him against the wall, hurting him and leaving him “terrified, exhausted, and [thinking] there was no way out of this.” (*Id.* at ¶¶ 31, 38.)

At about 10:30 p.m., the detectives broke Mr. Walker’s will and he agreed to provide a statement naming Mr. Mallet as the shooter. In that final statement, made after nearly a full day in custody, Mr. Walker claimed he saw the shooter: “I then see Celo got out of the car and approach Mike.” (Ex. I, Walker Statement at 10:30 p.m.) He also filled in the remaining hole in his previous statement: “I recognise [sic] cello because I met him before.” Mr. Walker also wrote that he saw “Celo” shoot “Mike twice in the head.” (*Id.*) After over nineteen hours in custody, Walker gave the police what they wanted to hear – at least at the time – a witness who heard two gunshots and identified Antonio Mallet. (*Id.*)

B. EVIDENCE AT TRIAL

Mr. Mallet’s trial began in March 1999. Mr. Walker was the prosecution’s only identification witness and the only evidence tying Mr. Mallet to the crime.

Walker’s Trial Testimony

At around midnight, Mr. Walker followed Mr. Ledeatte (who was driving the stolen Lexus) to a Waldbaum’s parking lot in the Bronx. (Mallet440-00084:18-96:1.) Mr. Walker’s understanding was that Mr. Ledeatte planned to deliver the stolen Lexus to a buyer. (*Id.*) Mr. Walker parked his car in the rear lot and waited for the exchange. (*Id.*) The distance between Mr. Walker’s car and Mr. Ledeatte’s was around 140 feet. (Mallet440-00104:13-15.) There were a few lights scattered throughout the back lot, and

while Mr. Walker testified at trial that he could see (Mallet440-00110:13-16), both he and police witnesses testified that the area was dark. (Mallet440-00048:25-49:2.)

Beyond the Lexus, Mr. Walker saw a man get out of a small white car and approach Mr. Ledeatte's car in a "friendly" manner. (Mallet440-00182:20-23.) Mr. Walker was so far away from the Lexus that it was "impossible" for anyone else present to have seen him. (Mallet440-00206:14-18.) Mr. Walker was never able to describe the second man to police. (Mallet440-00193:10-13.) That second man walked to the passenger door, while the shooter walked to the driver's door. (*Id.*) Mr. Walker was too far away to tell whether the second man had a beard or any other facial hair. (Mallet440-00190:23-191:5.)

Mr. Walker claimed that he could see Mr. Ledeatte bend towards the center console. (Mallet440-00111:18-23.) The shooter also bent down to look inside the car. (*Id.*) Then, for no apparent reason, the shooter stood up and fired a gun down into the car. (Mallet440-00113:8-12.) Mr. Walker never saw a gun but testified that he heard the gunshot. (*Id.*) The two suspects then drove off without taking the Lexus. (Mallet440-00113:13-16.) Mr. Walker identified Mr. Mallet as the shooter (Mallet440-00109:24-25.) Mr. Walker only heard one shot, but acknowledged at trial that he claimed to have heard two shots in one of his statements to the police. (Mallet440-00128:15-21; Ex. I.) Mr. Walker testified that he heard from the police that Mr. Ledeatte had been shot twice. (*Id.*)

At around 3 a.m., Mr. Walker called 911 from a pay phone outside Waldbaum's; minutes later, the police found him at the scene. (Mallet440-00114:18-

115:10.) The police seized Mr. Walker's vehicle and arrested him. (Mallet440-00117:9-23.) The police then locked Mr. Walker in a room, handcuffed him, and interrogated him throughout more than a dozen hours of custody (Mallet440-00218:20-219:2.)

Other Witnesses

Other than Mr. Walker, the only witnesses at trial were police officers who responded to the crime scene and the doctor who performed the autopsy. Dr. Zoya Schmuter testified from the Medical Examiner's office, stating that a single bullet went through Mr. Ledeatte's head, killing him. (Mallet440-00251:18-252:17.)

Officer Timothy D'Hedeene testified about the crime scene when he arrived after Mr. Walker's call, and testified that it was "dark" at the scene. (Mallet440-00032-36.) Detective John McAndrews testified about evidence collection. (Mallet440-00053-83.) Detective Mark Babuin testified about trying to recover fingerprints from the car, which were unable to exclude or include any person as having come in contact with the car. (Mallet440-00264-276.) Detective Kevin Tracy testified about the lineup he conducted on September 26, where Mr. Walker identified Mr. Mallet. (Mallet440-00276-309.) Detective James Giuliano testified about arriving to the scene and meeting Mr. Walker. (Mallet440-00309-317.) Officer Joseph Peters testified about arriving at the scene and finding Mr. Ledeatte with a pair of pliers in his hand. He also testified there was some lighting near the Lexus. (Mallet440-00318-331.)

Verdict, Sentence and Direct Appeal

The jury returned a guilty verdict. (Mallet440-00480.) At sentencing, newly retained counsel, Stuart Rubin, stated: "This is the thinnest murder case I have

seen which resulted in a conviction. No[t] a scintilla of evidence other than Mr. Walker whose initial statements to the police were at variance with his trial testimony in the precinct. . . . This is a wrongful conviction.” (Mallet440-00489.) When asked to address the Court, Mr. Mallet stated: “I am innocent. That is it. [Our] case has to be proven. Until then, I have to wait it out. That is it. I am innocent.” (Mallet440-00494.) The “tragic aspect” of this case, the Court explained, was that it did not “know if [Mr. Mallet was] guilty, having done this too long I just don’t know” (Mallet440-00497.) Mr. Mallet was sentenced to 20-years-to-life in prison. (*Id.*).

In March 2000, Mr. Mallet directly appealed the verdict before the Appellate Division, First Department. The Appellate Division affirmed the judgment of conviction on December 12, 2000. *People v. Mallet*, 278 A.D.2d 51 (1st Dep’t 2000). Mr. Mallet was denied leave to appeal to the Court of Appeals on April 6, 2001. *People v. Mallet*, 96 N.Y.2d 802 (2001). On May 14, 2002, Mr. Mallet filed a writ of error *coram nobis* with the Appellate Division, asserting, *inter alia*, ineffective assistance of trial counsel. The Appellate Division denied the *coram nobis* application on May 20, 2003. *People v. Mallet*, 305 A.D.2d 1126 (1st Dep’t 2003). The Court of Appeals denied leave to appeal. *People v. Mallet*, 100 N.Y.2d 584 (2003).

C. MR. MALLET CONTINUES FIGHTING HIS CONVICTION

Mr. Mallet fought his conviction every year he was incarcerated, but was unsuccessful because Mr. Walker had yet to recant his testimony. By motion to the Supreme Court, Bronx County, dated August 11, 2003, Mr. Mallet moved to vacate his judgment of conviction pursuant to CPL § 440.10, based on the grounds of ineffective

assistance of trial counsel and prosecutorial misconduct at trial, where he alleged, *inter alia*, that his trial counsel failed to investigate the case. Justice John Byrne denied that CPL § 440.10 motion on April 26, 2004. The Appellate Division denied leave to appeal on January 4, 2005. *People v. Mallet*, No. M-3955, 2005 N.Y. App. Div. LEXIS 141, at *1 (1st Dep't Jan. 4, 2005). Mr. Mallet petitioned the United States District Court, Southern District of New York, for writ of habeas corpus on January 5, 2005, arguing that: (1) he was denied his constitutional right to be present at all material stages of trial; (2) he was denied his constitutional right to speedy trial; (3) he received ineffective assistance of trial counsel; (4) the prosecution withheld *Brady* material and other discovery; (5) the police and prosecution conspired to adduce false testimony against him; and (6) he is actually innocent.

The Southern District denied his petition on May 26, 2006. *Mallet v. Miller*, 432 F. Supp. 2d 366 (S.D.N.Y. 2006). On June 7, 2006, Mr. Mallet requested reconsideration of the denial of his writ of habeas corpus petition, which the Court denied one week later. *Mallet v. Miller*, 438 F. Supp. 2d 276, 278 (S.D.N.Y. 2006). Thereafter, Mr. Mallet made a second motion for reconsideration alleging grounds of newly discovered evidence. The District Court denied Mr. Mallet's second motion for reconsideration on August 3, 2006. *Mallet v. Miller*, 442 F. Supp. 2d 156, 157 (S.D.N.Y. 2006). The United States Court of Appeals for the Second Circuit denied Mr. Mallet's motion for permission to appeal on December 26, 2006.

On August 17, 2006, Mr. Mallet submitted his second CPL § 440.10 motion, seeking to vacate his judgment of conviction based on newly discovered

evidence, misleading statements presented by the prosecution at trial, and ineffective assistance of trial counsel. In that motion, Mr. Mallet requested that the Court order the prosecution to turn over evidence relating to fingerprints along with a deformed lead bullet for reexamination. On May 31, 2007, Justice Darcel Clark denied Mr. Mallet's second CPL § 440.10 motion. On August 9, 2007, the Appellate Division denied Mr. Mallet's application for leave to appeal. *People v. Mallet*, No. M-3232, 2007 N.Y. App. Div. LEXIS 8935, at *1 (1st Dep't Aug. 9, 2007). Mr. Mallet's application for re-argument was also denied by order dated October 25, 2007.

In January of 2008, Mr. Mallet moved *pro se* for an order from the United States Court of Appeals for the Second Circuit authorizing the District Court for the Southern District of New York to consider a successive petition for a writ of habeas corpus on the ground of newly discovered evidence. On February 6, 2008, the Second Circuit denied the request. *Mallet v. Miller*, Case No. 08-0203 (2d Cir. 2008). On March 5, 2008, Mr. Mallet moved the United States District Court for the Southern District of New York for an order vacating its prior decision of May 26, 2006 on the ground of newly discovered evidence. The District Court denied that motion by order dated May 9, 2008. *Mallet v. Miller*, 553 F. Supp. 2d 336 (S.D.N.Y. 2008).

On June 10, 2008, Mr. Mallet moved pursuant to CPL § 440.10 for a third time, *pro se*, to vacate the judgment of conviction based on ineffective assistance of counsel. Mr. Mallet claimed that trial counsel failed to oppose the prosecution's request for a lesser included charge of Manslaughter in the First Degree and did not inform Mr. Mallet of the potential for an increased sentence based on that decision. On January 7,

2009, Justice Clark denied Mr. Mallet's motion. In a decision dated April 2, 2009, the Appellate Division denied leave to appeal.

On November 5, 2009, Mr. Mallet petitioned the Appellate Division, First Department for leave to reargue his appeal pursuant to CPL § 470.50(2) on the grounds that it had overlooked a material fact and misapprehended the law regarding the issues presented in his original appeal. By Order dated January 26, 2010, the First Department denied the application for reargument. *People v. Mallet*, 2010 NY Slip Op 61805(U) (1st Dep't 2010). On October 21, 2011, Mr. Mallet moved through newly retained counsel, for a fourth time, to vacate the judgment of conviction pursuant to CPL § 440.10 based on grounds of prosecutorial misconduct and newly discovered evidence – namely, that Gregory Walker had additional, undisclosed criminal convictions from Virginia. On July 2, 2012, Justice Clark denied Mr. Mallet's fourth CPL § 440.10 motion. By order dated March 5, 2013, the Appellate Division denied leave to appeal. *People v. Mallet*, 2013 NY Slip Op 66332(U) (1st Dep't 2013). By order dated May 28, 2013, the First Department denied Mr. Mallet's application for reargument. *People v. Mallet*, 2013 NY Slip Op 75009(U).

By order dated July 9, 2013, the Southern District dismissed Mr. Mallet's petition for successive habeas corpus relief. *Mallet v. Miller*, 953 F. Supp. 2d 491 (S.D.N.Y. 2013). The Second Circuit denied Mr. Mallet's motion for permission to file a successive habeas petition. *Mallet v. Miller*, Case No. 13-3693 (2d Cir. Dec. 12, 2013). Thereafter, the Hon. April Newbauer was assigned Mr. Mallet's motion to renew and/or reargue the Decision and Order dated July 9, 2012 by Justice Clark. On January

9, 2014, after a review of Mr. Mallet's *pro se* motion, affirmations, and documents submitted, the Court denied Mr. Mallet's motion.

On October 17, 2014, Mr. Mallet filed his fifth *pro se* § 440.10 motion to vacate his judgment of conviction, claiming ineffective assistance of counsel, newly discovered evidence, and actual innocence. That motion was based upon an unsworn, audio-recorded statement from Mr. Walker, where he told an investigator for Mr. Mallet that the men he saw had hoodies on, that the police had “roughed him up” and that he was not “100 percent sure” of his identification. On April 2, 2015, the Court rejected the motion regarding the new evidence because (1) Walker’s more recent statements did not differ sufficiently from his trial testimony; (2) he did not make an “unequivocal” recantation; (3) the new evidence was “unsworn”; and (4) Mr. Mallet did not bring the motion with due diligence.

Mr. Mallet appealed. He was appointed counsel from the Center for Appellate Litigation, who prosecuted the appeal. On January 22, 2019, the First Department affirmed the Supreme Court’s decision, holding that the claims failed because “they were not supported by any sworn, nonhearsay allegations by the source of the proffered new evidence, who was the sole eyewitness who testified at trial.” In addition, the First Department rejected the motion because it was not made with due diligence. *People v. Mallet*, 168 A.D.3d 542, 543 (1st Dep’t 2019).

D. GREGORY WALKER RECANTS HIS TRIAL TESTIMONY IN A SWORN AFFIDAVIT AND REVEALS THAT DETECTIVES COERCED FALSE TESTIMONY WITH THREATS AND PHYSICAL VIOLENCE

On July 6, 2019, Gregory Walker recanted his testimony and finally

revealed the truth about what he saw on the evening of September 24, 1996, signing a sworn affidavit while represented by counsel. Mr. Walker's affidavit confirmed that he saw the shooting from approximately 150 feet away. (Walker Aff. ¶ 13.) The affidavit reiterated that Mr. Walker saw two men, who he was able to identify as black, dressed in dark clothing. (*Id.* at ¶14.) Mr. Walker now reveals, for the first time in a sworn statement, that he could not make out either of the men's faces. (*Id.*)

Mr. Walker avers that saw one of the men, who was wearing a hoodie, lean into the Lexus as if to look at something, and then pulled back out. (*Id.* at ¶15.) A moment later, he saw him move his hand, and then heard a single pop, but did not actually see the gun. (*Id.*) After the gunshot, the two men ran to the white car and sped away. (*Id.* at ¶ 16.) After they were drove off, Mr. Walker drove up to Mr. Ledeatte's car and saw his friend shot and bleeding. (*Id.* at ¶ 17.) Mr. Walker went to a pay phone and called 911. (*Id.* at ¶ 18.) The police arrived, taking Mr. Ledeatte to the hospital, and Mr. Walker went along. (*Id.* at ¶ 19.) Police detectives came to the hospital and told Mr. Walker he needed to go to the station with them, which he did. (*Id.* at ¶ 20.)

For the first time, Mr. Walker details in the affidavit the extent of the police misconduct in this case. The detectives took him to a small room and started interrogating him for twenty hours. (*Id.* at ¶ 22.) After initially denying having seen the shooting, Mr. Walker admitted to the detectives that he was present for the shooting and heard the gunshot. (*Id.* at ¶ 26.) When Mr. Walker told the detectives that he did not know who the two men were, they became very angry and told him he was going to tell them who did it or he was not going to walk out of the police station. (*Id.*)

The detectives told Mr. Walker he was going to go down for the stolen car and questioned him about his involvement the murder. They told him he could go to prison for years. (*Id.* at ¶ 28.) Under pressure, Mr. Walker told the detectives the truth: he thought the men were both black, but that was all he could really say; he also told them could not see their faces because they were far away, it was dark, and their hats or hoodies obscured their faces. (*Id.* at ¶ 29.) The detectives refused to accept that, yelled and cursed at Mr. Walker, and threatened to send him to jail. They also told Mr. Walker his life was in danger because he witnessed the murder. (*Id.* at ¶¶ 30-32.)

Mr. Walker repeatedly told the officers he could not see the shooting. One detective got angry became physically violent. The detective grabbed Mr. Walker, pulled him out of the chair he was sitting in, and slammed him up against the wall. (*Id.* at ¶ 31.) Mr. Walker told the detectives everything he could remember about that day, including that he saw Mr. Mallet at Alpine Motors earlier in the day. (*Id.* at ¶ 33.) After he mentioned Mr. Mallet, as “Cee Lo,” the detectives seemed totally focused on Mr. Mallet and insisted said he must have been the shooter. (*Id.* at ¶34.) Walker said it was possible, but did not know for sure. (*Id.* at ¶ 35.) For hours, the detectives insisted that Mr. Walker knew Mr. Mallet was the shooter. (*Id.* at ¶¶ 36-37.)

Terrified and exhausted, with seemingly no other way out, Walker relented and told the detectives what they wanted to hear. (*Id.* at ¶¶ 38-39.) He said that it was “probably Cee Lo.” (*Id.* at ¶ 39.) Even that was insufficient, however, and the detectives resumed threatened Mr. Walker. (*Id.* at ¶ 40.) The detectives also told Mr. Walker that Mr. Mallet was a bad person with a long criminal record and that he

(Mr. Walker) just needed to confirm what they already knew. Eventually he told them that Mr. Mallet shot Mr. Ledeatte, “even though that was not true.” (*Id.* at ¶¶ 40-42.) Once Mr. Walker told them what they wanted to hear, the detectives became relaxed and friendly and asked him to write out one or more statements. Finally, they let him go. (*Id.* at ¶¶ 42-43.)

The detectives fed Mr. Walker various facts to put in his statements. (*Id.* at ¶ 47.) Importantly, one detective told Mr. Walker to write that Mr. Mallet shot Mr. Ledeatte twice. (*Id.*) Mr. Walker said he only heard one shot, but the detectives insisted that it was two shots and his statement needed to say so. (*Id.*) This “fact” was based on the detectives’ incorrect belief at the time, but later disproven by the physical evidence. At trial, the detectives told Mr. Walker to change his account back to the one shot, which was consistent with the Medical Examiner’s forensic findings. (*Id.* at ¶ 53.)

The detectives also took him to a lineup, and asked him to identify Mr. Mallet, whom Mr. Walker recognized from having seen him previously. (*Id.* at ¶ 45.) After he made the requisite identifications, Mr. Walker did not hear from the police or prosecutors for a substantial period of time. (*Id.* at ¶ 48.) Mr. Walker believed that portion of his life was over when prosecutors contacted him and told him he needed to return to New York to testify. (*Id.*) Detectives told Mr. Walker that he needed to cooperate with them because Mr. Mallet, who was out on bail, might hurt him and his family, and that he was a dangerous person. (*Id.* at ¶ 50.) The detectives lied to Mr. Walker, telling him that they had substantially more evidence than they did, that he was just a small part of the case. (*Id.* at ¶ 51.) Mr. Walker, scared of Mr. Mallet, the

police, and jail, went along with the story they had concocted. (*Id.* at ¶ 55.)

After the trial, Mr. Walker moved to Florida, stopped his involvement in any criminal activity and started his own trucking business (hauling cars). (*Id.* at ¶ 57.) Mr. Walker found religion and became very involved in the church. (*Id.* at ¶ 58.) After years of expressing his doubts but never fully recanting his testimony, Mr. Walker finally agreed to tell the whole truth. (*Id.* at ¶¶ 59-68.) Mr. Walker wrote the affidavit to “set the record straight...to do what is right and set an example for other people who were put in a position of being forced to wrongfully accuse another person of a crime.” (*Id.* at ¶¶ 68-69.)

E. MR. MALLET’S EXPERT WITNESS CORROBORATES MR. WALKER’S AFFIDAVIT AND PROVIDES ADDITIONAL

Mr. Walker repeatedly told detectives that he was unable to see and identify the person who shot Mr. Ledette. (*Id.* at ¶ 31.) After succumbing to detectives’ violence and threats, however, Mr. Walker claimed to have recognized Mr. Mallet from a distance of over 140 feet, in the middle of the night, in a darkly lit area behind a grocery store. At the time of Mr. Mallet’s trial, the science necessary to demonstrate the effect of those distance and lighting conditions would have on the ability to identify an individual from that distance did not yet exist. Since the trial, scientists in the field of human perception and memory – including Mr. Mallet’s retained expert, Dr. Geoffrey Loftus – have developed the ability to do so. Dr. Loftus has prepared and sworn to an expert report in this matter regarding Mr. Walker’s testimony. In his report (Ex. K), Dr. Loftus provides strong new evidence that corroborates Mr. Walker’s recantation. Dr. Loftus’s report states that:

- From the distance he was and in the lighting conditions in the parking lot, Mr. Walker could not have accurately identified Mr. Mallet. (Ex. K at p. 14.)
- The evidence strongly indicates that lighting conditions were sufficiently poor that Mr. Walker was using his *scotopic* visual system, which is incapable of detecting the fine detail necessary to encode a person's appearance. (*Id.* at p. 11.)
- Suggestive post-event information can bias a witness's memory of an event. (*Id.* at p. 7.)
- Eyewitnesses can and have strongly and confidently – yet falsely – identified actually innocent individuals as perpetrators of crimes. (*Id.* at p. 10.)
- The scientific research needed to create a pictorial demonstration (*infra*) of the visual loss caused by the lighting and distance conditions affecting Mr. Walker's observations of the crime was not available at the time of Mr. Mallet's trial. (*Id.* at p. 13.)

Dr. Loftus's report includes a visual representation, based on his published research, which recreates the effect that the lighting and distance conditions had on Mr. Walker's ability to perceive the perpetrators from 140 feet away, in the dark of night:



(Ex. K at p. 13.)

ARGUMENT

F. MR. WALKER'S RECANTATION IS NEW EVIDENCE WHICH MERITS RELIEF UNDER CPL § 440.10(G)

Under CPL § 440.10(1)(g), evidence discovered after the entry of judgment against the defendant, which could not have been discovered through due diligence by the defendant and which creates the probability that the verdict would have been more favorable to the defense, warrants vacatur. N.Y. CPL § 440.10(1)(g); *People v. Salemi*, 309 N.Y. 208, 215 (1955); *People v. Tankleff*, 49 A.D.3d 160, 179 (2d Dep't 2007); *People v. Jackson*, 29 A.D.3d 328, 329 (1st Dep't 2006). This motion is based upon the most powerful new evidence Mr. Mallet could present and that could not have been discovered: contrary to his trial testimony, Gregory Walker did not recognize the shooter, and he testified falsely because of threats, violence, and coercion by police.

Generally, courts apply the factors set forth in *People v. Salemi* to determine whether evidence is "newly discovered." Evidence is newly discovered when it: (i) will probably change the result if a new trial is granted; (ii) has been discovered since the

trial; (iii) could not have been discovered before the trial by the exercise of due diligence; and (iv) does not merely impeach or contradict the former evidence. 309 N.Y. at 215.

New York courts have consistently held that the recantation of important witness testimony satisfies the *Salemi* factors. See, e.g., *People v. Hargrove*, No. 10150-91, slip op. at 5 (Sup. Ct. Kings. Cty. Apr. 14, 2015); *People v. Wise*, 194 Misc. 2d 481 (Sup. Ct. N.Y. Cty. 2002); *People v. Ramos*, 132 Misc. 2d 609, 612 (Sup. Ct. Kings Cty. 1985). Here too, Mr. Walker's recantation satisfies the *Salemi* factors. Mr. Walker provided the only evidence against Mr. Mallet and his recantation must change the result if a new trial is granted. His recantation comes two decades after the trial, was never previously made under oath or with the level of detail contained in the affidavit, and obviously could not have been discovered before trial. Finally, the recantation does more than merely impeach or contradict former evidence: it eliminates the only evidence that connected Mr. Mallet to the crime.

Moreover, Mr. Walker's recently sworn statement contains more than a recantation: he has revealed, for the first time, that: (1) police detectives used threats, coercion, and even physical violence to induce his false identification of Mr. Mallet; (2) he repeatedly told the police that he could not see the shooter or the shooter's accomplice well enough to identify either of them, exculpatory statements that were never disclosed to the defense; and (3) the police made numerous false representations to induce his trial testimony, including that: (a) Mr. Mallet had a long and violent criminal history, (b) Mr. Mallet had designs on hurting Mr. Walker and/or his family,

and (c) police had a great deal of evidence against Mallet apart from Mr. Walker's identification.

Where newly discovered evidence consists a witness recantation, courts are tasked with evaluating its credibility. *People v. Wong*, 11 A.D.3d 724 (3d Dep't 2004) (following *People v. Shilitano*, 218 N.Y. 161 (1916)). To make this determination, New York courts apply the six-factor *Wong* test:

(1) the inherent believability of the substance of the recanting testimony; (2) the witness's demeanor both at trial and at the evidentiary hearing; (3) the existence of evidence corroborating the trial testimony; (4) the reasons offered for both the trial testimony and the recantation; (5) the importance of facts established at trial as reaffirmed in the recantation; and (6) the relationship between the witness and Mr. Mallet as related to a motive to lie.

Wong, 11 A.D.3d at 725-26. Importantly, a court is not required to decide whether the recantation is truthful; rather, it must only determine whether the statement is sufficiently credible to be put before a jury, and, if credited by the jury, to create a reasonable probability of a more favorable outcome. *Id.* at 725. Had the jury known the facts set forth in Mr. Walker's affidavit – including that he did not see who shot Mr. Ledeatte, and that police used threats and violence to coerce his identification of Mr. Mallet – a more favorable outcome would be reasonably probable. Mr. Walker's recantation meets the *Wong* standards. Each is discussed in turn below, except for the demeanor factor, which would be addressed after an evidentiary hearing, if such a hearing is deemed necessary.

1. Mr. Walker's Recantation is Inherently Believable

New York courts evaluate the "inherent believability" of a witness

recantation on the basis of a number of factors: internal consistency (e.g. *People v. Jenkins*, 84 A.D.3d 1403 (2d Dep’t 2011); *People v. Watson*, 43 Misc. 3d 1234(A) (Sup. Ct. Bronx Cty. 2014)); its relationship to previous statements or trial testimony given by the witness (*People v. Avery*, 80 A.D.3d 982 (3d Dep’t 2011)); and the existence of police pressure (e.g. *People v. Deacon*, 96 A.D.3d 965 (2d Dep’t 2012); *Hargrove*, No. 10150-91, slip op. at 8; *Tankleff*, 49 A.D.3d 160.). Here, each factor weighs in favor of the believability of Mr. Walker’s recantation.

(a) Mr. Walker’s Recantation Is Internally Consistent

Given the visual conditions under which Mr. Walker purported to identify Mr. Mallet, his recantation makes inherent sense. The victim was 140 feet away from Mr. Walker when he was shot, in the dark of night. (Walker Aff. ¶ 13.) Numerous witnesses, including police officers who responded to the scene, described it as dark. (Mallet440-00048:25-49:2.) Contrary to Mr. Walker’s trial testimony purporting to identify Mr. Mallet – which was at odds with his testimony that he could not discern any feature of the “other” perpetrator (such as whether he had facial hair), could not see a gun, and could not identify the make of the perpetrators’ car (Mallet440-00181:8-182:13; 190:23-191:5; 195:25-196:3;) – his affidavit is consistent with the remainder of his trial testimony regarding his limited ability to see the crime as it occurred.

It therefore comes as no surprise that Mr. Walker has since acknowledged that while “[b]oth of the men appeared to be black,” he could not identify either person, averring that “[b]oth men were dressed in dark clothing and wearing hats that were pulled down and blocking their faces. I could not make out either of their faces.”

(Walker Aff. ¶ 14.) Given the time of night and distance involved, Mr. Walker's recantation is more credible than his purported identification. *See, e.g., People v. Jenkins*, 84 A.D.3d 1403 (2d Dep't 2011) (finding recantation evidence from the sole eyewitness inherently credible given that the purported identification was made at night, from across the street, approximately 128 feet away).

Mr. Walker's affidavit is consistent with his statements to the police through the 20th hour of his interrogation, and inconsistent with his final statements to police. *See Deacon*, 96 A.D.3d at 969 (finding witness's recantation "credible and compelling" based on "the testimony of the other witnesses at the hearing and its consistency within the context of other matters contained in this record"). Importantly, Mr. Walker's final statement to police included "mistaken facts" – one of the hallmarks of a false statement obtained by police, such as a false confession. *See, e.g., Brandon L. Garrett, The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1083-84 (2010). A "mistaken fact" is a factual proposition police investigators believed to be true at the time of a subject's statement, but which is later proven to be false. *Id.* Here, police added to Mr. Walker's statement the "mistaken fact" that he witnessed Mr. Ledeatte being shot *twice* – a "fact" the police believed early in the investigation because the bullet's exit wound was confused for a second entry wound. (Walker Aff. ¶¶ 47, 53.) Mr. Walker's affidavit is further bolstered by the affidavit of Kelvin Rosado, who avers that Detective Nieves similarly threatened him in an effort to procure false testimony. (See Ex. C.)

Mr. Walker's statements implicating Mr. Mallet came after he faced nearly

every interrogation tactic found to have caused false testimony:

The detectives took me to a small room and started interrogating me...They interrogated me for around 20 hours, maybe more...The detectives had me write out a few different statements...When I told them I did not see the shooting, they said I was lying...They said I knew who did it and I was going to tell them or I was not going to walk out of the police station...They said that I was going to go down for the stolen car if I didn't tell them who shot Mike, and they questioned me about whether I was involved the murder...They told me I could go to prison for many years – they mentioned a certain number (of years), but I do not remember how many...They yelled at me, cursed at me, and threatened to send me to jail... One detective got angry and at one point he got violent. The detective grabbed me and pulled me out of the chair I was sitting in. He slammed me up against the wall, which was painful and scared me.

(Walker Aff. ¶¶ 24-38.)

(b) The Recantation is Consistent with Scientific Evidence

Mr. Walker's recantation is consistent with scientific evidence, which shows he could not have accurately identified Mr. Mallet given the distance and lighting conditions he faced. As Dr. Loftus, the expert witness retained by Mr. Mallet, explains in his report, human beings cannot accurately perceive facial features at that distance and in that lighting. Moreover, Dr. Loftus explains that Mr. Walker's "identification" is something he could have come to believe given the pressure he was under at the time to identify Mr. Mallet. In his recantation and affidavit, Mr. Walker is affirming what the scientific evidence demonstrates: that it was impossible for him to identify either of the perpetrators in Mr. Ledette's murder.

2. No Evidence Has Ever Been Presented Corroborating Mr. Walker's Trial Testimony

In weighing the credibility of witness recantations, courts consider whether there is corroborating evidence supporting the trial verdict, including witness testimony, physical evidence or admissions of guilt. *Bronson*, 32 Misc. 3d 201 (noting that a recantation may be substantiated by a lack of trial evidence connecting the defendant to the crime); *see also Deacon*, 96 A.D.3d 965; *Watson*, 43 Misc. 3d 1234(A); *People v. Lane*, 100 A.D.3d 1540 (4th Dep't 2012); *People v. Tucker*, 40 A.D.3d 1213 (3d Dep't 2007). Here, the prosecution offered nothing other than Mr. Walker's purported identification: no other witness's testimony; no physical or forensic evidence; and, importantly, no motive. Mr. Mallet made no admission of guilt, and in fact has consistently maintained his innocence, including by asking police to investigate his alibi from the day he turned himself in.

3. Mr. Walker's Recantation is Credible Because He Explains the Reasons for Both His Trial Testimony and His Recent Affidavit

The facts that Mr. Walker was physically harmed, threatened with imprisonment, and falsely told that Mr. Mallet posed a threat to him were not in the trial record. That alone is ample reason for Mr. Walker's willingness to give false testimony to the police as a means of protecting himself. Mr. Walker lays out both the factual narrative and the bases for his fears in his detailed affidavit. Moreover, Mr. Walker provides understandable reasons for continuing to stand by his false statements during the trial. He avers that detectives lied to him regarding Mr. Mallet's criminal history and that he was under threat. He also says that the detectives lied to him

regarding the amount of evidence they had against Mr. Mallet, trying to assuage his guilt from falsely implicating Mr. Mallet. Finally, he notes that the police were shifting his testimony – and he obliged – throughout the trial process, such as when they told him to change his testimony to describe one shot rather than two, after the medical examiner determined that Mr. Ledeatte suffered only a single gunshot wound. Mr. Walker states in his affidavit that he “said those things because [he] was scared and [he] believed the detectives would send me to jail” if he did not continue to implicate Mr. Mallet. (Walker Aff. ¶ 55.)

Mr. Walker’s reason for his recantation is equally compelling. Mr. Walker left behind his criminal past in the years since he testified against Mr. Mallet. He eventually moved to Florida and started a trucking business. (Walker Aff. ¶ 57.) He also became a religious person and active in his church. (*Id.* at ¶ 58.) Although he was never previously willing to provide a sworn affidavit, Mr. Walker has spoken over the past ten years about regrets and uncertainty concerning his testimony. (*Id.* at ¶ 59.) He spoke to investigators and lawyers for Mr. Mallet years ago, but refused to get further involved, seeking to put that part of his life behind him. (*Id.* at ¶¶ 56, 60-61.) Mr. Walker also previously refused to sign an affidavit because he was still scared that Mr. Mallet might be the dangerous criminal detectives falsely described him to be. (*Id.* at ¶ 62.) When he learned that Mr. Mallet was not dangerous, that Mr. Mallet did not have a violent criminal record and was not seeking to hurt him, he was finally willing to tell the truth, and remove the guilty conscience that had plagued him for decades. (*Id.* at ¶¶ 63-69.)

4. Mr. Walker's Recantation Decimates the Prosecution's Case

Because Mr. Walker offered the only evidence against Mr. Mallet, his recantation neither supports nor contradicts any other evidence presented at trial, and, as such, the fifth *Wong* factor weighs in Mr. Mallet's favor.

5. Mr. Walker Has No Relationship with Mr. Mallet

Courts must consider whether there is a motive to lie on the part of the recanting witness, such as a familial or otherwise intimate bond between the witness and the defendant. *People v. Simmons*, 20 A.D.3d 813, 815 (3d Dep't 2005). Mr. Walker is not related to Mr. Mallet, nor is he his friend or acquaintance. He has no reason to lie on Mr. Mallet's behalf and every incentive to stick to his trial testimony.

As his affidavit makes clear, however, Mr. Walker is attesting to the facts set forth in the affidavit out of remorse and a newfound purpose in life. Nearly 20 years after leaving his criminal lifestyle, enduring the ordeal of being dragged to court to falsely testify, and starting a new life, Mr. Walker has agreed to help expose the true events that led to Mr. Mallet's wrongful conviction, in an attempt to do what is right.

In sum, Mr. Walker's affidavit is newly discovered evidence under New York law and clearly meets each of the *Wong* factors. Mr. Walker's testimony was the only inculpatory evidence presented, the record shows that it was deeply flawed, and it has now been undone. This Court should grant the requested relief on the basis of the recantation, standing alone.

G. DR. LOFTUS'S EXPERT REPORT IS NEW EVIDENCE WHICH MERITS RELIEF UNDER CPL § 440.10(G)

Mr. Mallet's expert, Geoffrey Loftus, not only supports the credibility of

Mr. Walker's recantation, but also presents new evidence that could not have been presented at the time of the trial. Dr. Loftus's research, groundbreaking in the field, on eyewitness perception did not begin until 1999 and was not finalized until 2004. (*See* Ex. J.) The extent to which distance and lighting affected witness perception, memory, and accuracy of identification had not been demonstrable until that time.

In fact, the general consensus in the courts in New York was that jurors were able to use their own lay abilities to estimate the relationship between identification, distance, lighting, perception, and memory. *See People v. Mooney*, 76 N.Y.2d 827, 829-30 (1990); *People v. Lee*, 96 N.Y.2d 157, 162 (2001). It was not until more recently that eyewitness testimony experts have been accepted, based on scientific consensus. *People v. LeGrand*, 8 N.Y.3d 449, 457 (2007). Nor does Dr. Loftus's expert report "merely" serve to impeach the credibility of witnesses at trial. *Salemi*, 309 N.Y. at 215. Dr. Loftus's expert report and testimony go to the central question of whether it would be possible to identify *anybody* under the distance and lighting conditions facing Mr. Walker, the sole eyewitness to the crime. Far beyond impeaching Mr. Walker's testimony, Dr. Loftus's report would vitiate it to such an extent that it must be considered new evidence.

H. MR. MALLET'S CONVICTION SHOULD BE VACATED UNDER CRIMINAL PROCEDURE LAW §§ 440.10(1)(D) AND (G) BECAUSE MATERIAL EVIDENCE ADDUCED AT TRIAL WAS PROCURED IN VIOLATION OF HIS FIFTH AMENDMENT RIGHTS

New York Criminal Procedure Law § 440.10(1)(d) provides that a court may vacate a judgment upon the grounds that material evidence adduced at trial was procured in violation of the defendant's rights under the New York or United States

Constitution. Mr. Mallet's Fifth and Fourteenth Amendment due process rights were violated when he was identified in a lineup, and later at trial, by a witness who had first refused to implicate him and then was pressured into doing so. Where indicators of a witness's ability to make an accurate identification are "outweighed by the corrupting effect" of law enforcement suggestion, the identification should be suppressed. *Perry v. New Hampshire*, 132 S. Ct. 716, 724 (2012) (internal citations omitted) (quoting *Manson v. Brathwaite*, 432 U.S. 98, 116 (1977)).

New York courts have cited a number of police practices which are unduly suggestive. Unsurprisingly, one example is when law enforcement indicates the individual they want the witness to identify. *See, e.g., People v. McQueen*, 170 A.D.2d 696, 697 (2d Dep't 1991) ("[T]he taint caused by a police officer who pointed out the defendant's picture to a victim who was previously unable to identify the defendant was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.").

As described above, Mr. Walker explains in his affidavit that although he told the detectives that he could not identify the individuals he had seen the night of the murder, they pressured him to implicate Mr. Mallet after a lengthy and violent interrogation. Mr. Walker states that because he felt pressured by the detectives, he made this now-admittedly false identification. Because each of Mr. Walker's false identifications – clearly material evidence – were adduced in violation of Mr. Mallet's constitutional rights, he is entitled to vacatur pursuant to N.Y. Crim. Proc. Law § 440.10(1)(d).

I. BY WITHHOLDING CRITICAL EVIDENCE THAT PREJUDICED MR. MALLET'S CASE, THE PROSECUTION COMMITTED *BRADY* VIOLATIONS WARRANTING VACATUR OF THE CONVICTION.

Due process requires that the prosecution disclose to a defendant any evidence in its possession that is “material either to guilt or to punishment.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *see also People v. Lewis*, 125 A.D.3d 1109, 1110 (3d Dep’t 2015). This includes evidence relating to a witness’s credibility. *Lewis*, 125 A.D. at 1110. Failure to disclose evidence constitutes a *Brady* violation when: “(i) the evidence is favorable to defendant because it is either exculpatory or impeaching in nature; (ii) the evidence was suppressed by the prosecution; and (iii) prejudice arose because the suppressed evidence was material.” *Id.* As previously discussed, the facts set forth in Mr. Walker’s recent affidavit – including that he was physically assaulted and pressured into presenting false testimony – were never disclosed to the defense. Nor were Mr. Walker’s numerous exculpatory statements that he could not identify Mr. Mallet or anyone else as the perpetrator. Such omissions, Mr. Mallet submits, constitute *Brady* violations warranting relief under 440.10(1)(d), (g), and (h).

Evidence tending to impeach a witness’s credibility constitutes *Brady* material. *Lewis*, 125 A.D.3d at 1110. Evidence impeaches when it has “the potential to alter the jury’s assessment of the credibility of a significant prosecution witness.” *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1997). In *Lewis*, the court held that non-disclosure of a threat of criminal charges against prosecution witness constituted a *Brady* violation. 125 A.D.3d at 1109-10. *See also People v. Sinha*, 84 A.D.3d 35, 40-41 (1st Dep’t 2011) (finding a *Brady* violation where a jury was denied the opportunity to see

emails that might have impeached a witness's credibility); *People v. Lantigua*, 228 A.D.2d 213, 219-21 (1st Dep't 1996) (holding that, in a trial with only one prosecution witness, "the failure to disclose that the version of events given by that witness may be at variance with the truth is a clear violation of the *Brady* obligation").

Walker, as the prosecution's sole witness, was a "significant prosecution witness." *Id.* Non-disclosure of the violence used, the repeated suggestion use, and threats made against Walker was, therefore, a plain violation of *Brady*. Finally, in order to bring a successful *Brady* claim, "the defendant must show that the omitted evidence creates a reasonable doubt that did not otherwise exist." *People v. Velez*, 118 A.D.2d 116, 118-19 (1st Dep't 1986). Moreover, the Supreme Court has held that the "'omission must be evaluated in the context of the entire record . . . [I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.'" *Id.* (quoting *United States v. Agurs*, 427 U.S. 97, 112 (1976)). Specifically, "evidence whose function is impeachment may be considered material where the witness in question supplied the only evidence linking the defendant to the crime." *Avellino*, 136 F.3d at 256.

Every factor that courts look to in determining whether evidence is material under *Brady* weighs heavily in Mr. Mallet's favor. In a single-eyewitness case – let alone one where the witness changed his statements multiple times and conformed his statements to police misinformation – evidence of the circumstances under which the witness testified is critical to a proper determination of his credibility. The jury never had the chance to learn that Mr. Walker was coerced, threatened, and lied to, in

order to get him to implicate Mr. Mallet.

J. MR. MALLET’S CONVICTION SHOULD BE VACATED UNDER CRIMINAL PROCEDURE LAW §§ 440.10(1)(G) AND (H) BECAUSE HE IS ACTUALLY INNOCENT

The conviction and incarceration of an innocent person violate the Due Process Clause of the New York State Constitution, as well as its prohibition against cruel and unusual punishment. *People v. Hamilton*, 115 A.D.3d 12, 26 (2d Dep’t 2014). To establish actual innocence, courts require a defendant to demonstrate by clear and convincing evidence that he is actually innocent of the crime for which he was convicted. A *prima facie* showing is made when there is a “sufficient showing of possible merit to warrant a fuller exploration by the court.” *Id.* at 27 (citing *Goldblum v. Klem*, 510 F.3d 204, 219 (2d Cir. 2007)). Finally, with respect to claims for actual innocence, unlike claims based on newly discovered evidence, the court should consider all reliable evidence, whether or not it satisfies the *Salemi* factors. *Id.* at 25.

As discussed, the prosecution’s evidence in this case was scant and unreliable, and never should have served as the basis for a conviction. To the extent that there is credible evidence in the record, however, it points to Mr. Mallet’s innocence. Mr. Mallet has maintained his innocence from the day he was arrested to today. He turned himself in when he heard his name being discussed. He has pressed every appeal and post-conviction remedy available to him. Even after being released from prison on parole, he has sought to clear his name. Mr. Mallet also had an alibi that he told the police about when he brought himself in: he was watching his girlfriend’s daughter, during that time, she split her lip, and they had to go to the hospital for

stitches. His girlfriend asked him to stay over that night, which he did. Mr. Mallet is in possession of the hospital record showing his girlfriend's daughter's visit to the hospital that night. (*See Ex. J.*)

In the 23 years that have passed, no evidence has emerged inculcating Mr. Mallet. Rather, in a case fraught with contradictions and missing links due to investigative misconduct, the only evidence that *is* reliable points to Mr. Mallet's innocence. He has met his burden of proving his actual innocence by clear and convincing evidence.

CONCLUSION

For the foregoing reasons, Mr. Mallet's judgment of conviction should be vacated under CPL § 440.10, or an evidentiary hearing conducted under CPL § 440.30.

Dated: New York, New York
October 15, 2019

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Attorneys for Movant-Defendant Antonio Mallet

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM

PEOPLE OF THE STATE OF NEW
YORK,

- against -

ANTONIO MALLET,

Movant-
Defendant.

Ind. No. 7180/96

**AFFIRMATION OF DAVID B.
SHANIES**

I, DAVID B. SHANIES, an attorney duly admitted to practice before the courts of
the State of New York, hereby state and affirm:

1. I am the attorney for movant-defendant Antonio Mallet. I am a member in good standing of the Bar of the State of New York. I make this affirmation in support of Mr. Mallet's motion to vacate his judgment of conviction ("Motion").
2. This affirmation, the accompanying Memorandum of Law, Exhibits, and other documents are submitted in support of Mr. Mallet's Motion. The facts recited in support of the Motion are based on my personal knowledge and my examination of the trial record and transcripts, affidavits from witnesses, and other documents and information obtained during the investigation and litigation of this case.
 - a. Attached hereto as Exhibit A is the trial transcript from Mr. Mallet's criminal trial, *People v. Mallet*, Ind. 7180/96.
 - b. Attached hereto as Exhibit B is an affidavit signed by Gregory Walker, dated July 6, 2019.
 - c. Attached hereto as Exhibit C is an affidavit signed by Kelvin Rosado, dated August 19, 2019.
 - d. Attached hereto as Exhibit D is a DD-5 with investigative notes from Detective Milian, dated September 24, 1996.

- e. Attached hereto as Exhibit E is a DD-5 reflecting statements made by Gregory Walker, dated September 24, 1996.
 - f. Attached hereto as Exhibit F is a written statement signed by Gregory Walker at 5:35 a.m. on September 24, 1996.
 - g. Attached hereto as Exhibit G is a written statement signed by Gregory Walker at 8:30 p.m. on September 24, 1996.
 - h. Attached hereto as Exhibit H is a written statement signed by Gregory Walker, also purportedly made at 8:30 p.m. on September 24, 1996.
 - i. Attached hereto as Exhibit I is a written statement signed by Gregory Walker at 10:30 p.m. on September 24, 1996.
 - j. Attached hereto as Exhibit J is a hospital record for Ericka Bryant from the night of September 23, 1996.
 - k. Attached hereto as Exhibit K is the expert report of Geoffery Loftus, affirmed September 24, 2019.
3. I have reviewed the accompanying memorandum of law ("Memorandum"), which sets forth the factual and legal grounds for Mr. Mallet's motion, and I incorporate the Memorandum by reference herein.
4. The facts set forth in the Memorandum are true and correct and are supported by competent and admissible evidence, including the Exhibits attached hereto.

Dated: New York, New York
October 15, 2019

DAVID B. SHANIES LAW OFFICE



David B. Shanies
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EXHIBIT A

1 SUPREME COURT OF THE STATE OF NEW YORK
2 TRIAL TERM PART XXXI : COUNTY OF BRONX

3 -----X

4 PEOPLE OF THE STATE OF NEW YORK

Ind. 7180/96

TRIAL
PROCEEDINGS

5 -against-

6
7 ANTONIO MALLET,

8 Defendant

9 -----X

10 851 Grand Concourse
Bronx, New York, 10451
March 11, 1999, et seq.

FILED

SEP 28 2016

SUP COURT, APP. DIV.
FIRST DEPT.

11 BEFORE: HONORABLE LAWRENCE TONETTI,
12 J U S T I C E.

13 APPEARANCES:

14 ROBERT T. JOHNSON, ESQ.,
15 Bronx District Attorney
For the People
16 By: VICTOR PIACENTILE, ESQ.
Assistant District Attorney.

17 ROTHMAN, SCHNEIDER, SOLOWAY & STERN
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18 70 Lafayette Street
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19 BY: JEREMY SCHNEIDER, ESQ.

20 Kenneth A. De Corso, C.S.R.
Senior Court Reporter
21
22
23
24
25

1 THE COURT: All right. If we're all ready, let's
2 bring the jury down.

3 (The jury enters the courtroom. Roll call is taken
4 by the court clerk.)

5 COURT CLERK: Your Honor, this is the case on
6 trial, People of the State of New York versus an Mallet.

7 Note for the record that the Defendant is present,
8 his attorney is present, the assistant district attorney is
9 present and also present are our fourteen jurors.

10 THE COURT: Good morning, ladies and gentlemen.

11 Okay. We're about to start our trial. We're not
12 going to do too much today, which may come as a relief for
13 some. I expect we will be out of here certainly before
14 lunchtime today and then we'll resume the trial on Monday
15 because they'll be no session tomorrow. I think I explained
16 that to you when you were picked.

17 Now some of you were asked in the past, what do we
18 do tomorrow? Well, that's between you, your job and your
19 conscience. If you have the kind of job that's going to look
20 at those slips that you bring back, some jobs do that, and
21 then it'll show, the slips will reveal that you weren't here
22 tomorrow because there was no session, but if you have the
23 kind of job where the boss says oh, you're finished with
24 jury duty, thank God you're back, we're happy to have you
25 back, then take the weekend off, go shopping, go to the

1 movies, go on a trip or whatever, but they'll be no session
2 tomorrow.

3 Okay. That having been said, the law requires that
4 before we start a trial that the judge give the jury what
5 are called preliminary instructions. Some of what I'm about
6 to tell you is repetitive. You heard it the day before when
7 you were being picked, but it's important to keep it in mind
8 as jurors.

9 As Mr. Schneider pointed out, I think rather
10 forcefully yesterday, it's important to bear in mind that
11 merely because the Defendant has been indicted by a grand
12 jury doesn't mean that he's guilty. I think one of you, I
13 don't recall which one, has already served in the past on a
14 Grand Jury and knows that the grand jury's function is to
15 determine whether or not the accusation has some basis to it
16 so that we can present it to a jury. That's all they
17 determine. They don't determine guilt or innocence. They
18 determine that someone has made an accusation, and that's
19 all that's happened here; someone has accused this Defendant
20 of committing the crime of murder and there was testimony
21 presented to a Grand Jury and he was indicted.

22 You are not to draw any inference against him from
23 the fact that he was indicted. The indictment is a piece of
24 paper that tells a person what he is accused of. It's not
25 evidence.

1 When the Defendant appeared in court with his
2 lawyer, he entered a plea of not guilty, denying these
3 charges. That means that the district attorney is now
4 required to present evidence to prove the validity of the
5 charges.

6 The Defendant, under the law, is presumed
7 innocent. That presumption of innocence comes to us from the
8 English common-law system which we adopted and that is that
9 every person accused of a crime shall be innocent until
10 proven guilty. And that's the law.

11 That's why, as Mr. Schneider properly instructed
12 you yesterday, as you look at the Defendant now, he's
13 innocent of these charges. Okay? And that presumption of
14 innocence will remain with him right through the entire
15 case.

16 Now when you go upstairs to deliberate after
17 you've heard all the evidence and the Court's instructions
18 on the law, and you discuss the case amongst yourselves, if
19 you come to the conclusion that his guilt has been proven
20 beyond a reasonable doubt, then he's no longer presumed
21 innocent because the presumption of innocence will have been
22 overcome by the weight of the evidence in the case.

23 If you are unable to come to that conclusion you
24 must give him the benefit of the reasonable doubt that you
25 have and find him not guilty. You do this without any

1 sympathy or bias against either side.

2 Someone was killed here. That doesn't mean that
3 this Defendant is guilty. It'll all depend on the evidence
4 that is presented and the law as the Court explains it to
5 you, which you must agree to follow, as you have done, as
6 jurors.

7 The burden of proof in a criminal case rests
8 solely and exclusively on the district attorney. That's his
9 job, to present the evidence and he'll do it with what he
10 has with respect to the evidence that he has to present.
11 He'll show you what the case is about and apropos of that in
12 a moment, Mr. Piacentile will stand before the jury and make
13 what is called an opening statement. He's required to do
14 that under the law, to make an opening statement. Since he
15 has the burden of proof, the law says, tell the jury what it
16 is that you expect to prove.

17 Now he's talked to the witnesses. He's talked to
18 the police officers. He's gone over the case and he knows
19 what the evidence is going to reveal, so he's going to give
20 you an outline of the entire case.

21 What he says is not evidence, but he's going to
22 tell you what the witnesses will claim. Then at the end of
23 the case you decide whether or not he has met his burden of
24 proving the Defendant's guilt beyond a reasonable doubt.

25 The Defendant is under no obligation to make an

1 opening statement. He doesn't have to prove anything, so he
2 doesn't have to make one. He may, if he chooses, tell you
3 what he hopes to show during the course of the trial, but
4 he's under no obligation to do so.

5 What do we mean by reasonable doubt? It's the
6 kind of doubt that a reasonable person would have after
7 reviewing the evidence or lack of evidence in a case. It's
8 not a guess or a whim on the part of a juror. And it's not
9 the kind of doubt where you can say well, I don't know. I
10 have a doubt.

11 The doubt has to be based on the evidence or the
12 lack of evidence. That's crucial here. When you're upstairs
13 in the juryroom and you're discussing this case, if one of
14 the jurors were to say, I have a reasonable doubt, the other
15 jurors would have a right to confront that juror and say,
16 well, what's it based on? Share it with us. Perhaps we
17 agree with you, once you explain your reasoning to us.

18 You can't go off into a corner as a juror and say,
19 "I have a doubt. I don't have to give you any reasons for
20 it. I don't want to discuss it. When you guys are finished,
21 let me know and then we'll go down and tell the judge."

22 That violates your oath as a juror. Your oath as a
23 juror is to share and discuss and reason with your fellow
24 jurors in an effort to arrive at a fair and just verdict,
25 which is what all of you want to do in this case. The

1 Defendant is accused killing of somebody. You have to
2 resolve this. Can the People prove that he did it beyond a
3 reasonable doubt? You must decide the case. We've waited
4 some two-and-a-half years to have this trial and now we're
5 going to have it.

6 While I don't expect to go very far today, I do
7 expect to finish the case by the middle of next week,
8 hopefully we'll have a full day Monday with the main
9 eye-witness who alleges that he saw this crime, and he will
10 come before you and be examined by the lawyers and you'll
11 hear his evidence and the medical examiner's evidence and
12 then we should finish up by Wednesday and then we'll give
13 the case to the jury perhaps on Thursday. We'll see how fast
14 we go.

15 As a jury, what's important, there are, I know,
16 some of you have served before and you know what is
17 important is for you to pay careful attention to the
18 witness. You've not seen these people before and you don't
19 know them. They come here, they'll be examined by both
20 lawyers and you'll have to decide, based on what they tell
21 you, are they telling you the truth?

22 That's the function of each juror, to look at each
23 witness and decide, is he telling the truth? Is he lying?
24 Is he exaggerating? Is he mistaken? These are the things
25 that you will have to enquire about.

1 How do you do that? Well, you use your common
2 sense. You're people who live in the real world. You come
3 into contact with other people and you listen to what they
4 have to say. You see who the person is, you listen to what
5 he's about and you determine whether the person's telling
6 the truth or not. That's the function of the jury.

7 My job is to explain the law to you. I will do the
8 best I can to simplify things for you so that you will
9 understand what the legal principles are. They're not
10 complicated.

11 There are some admonitions that I must give you,
12 and they're simple, you've heard this before:

13 You're not to go to the scene. This occurred in a
14 parking lot of Waldbaum's at 2:30 in the morning. I don't
15 want anybody going to the parking lot at Waldbaum's over the
16 weekend at 2:30 in the morning to see what it looks like.
17 That's not your job. You're not detectives. All of that has
18 been done. What you have to determine now is the
19 credibility of the witnesses, the facts that are presented
20 to you.

21 You're also not to discuss the case with anybody
22 until it's over. When it's finished you can tell anybody
23 you like about the experience you had in Judge Tonetti's
24 courtroom, but when you go home tonight, you can't say,
25 "Well gee, we started this murder case and we had the first

1 cop on the scene, we looked at some pictures. What do you
2 think?"

3 You can't do that. It's not fair, because human
4 nature being what it is, if you were to go home and tell
5 your friend or your spouse, somebody you live with, what you
6 heard, what are they going to do? They're going to give you
7 their opinion and they weren't here. They didn't see the
8 witnesses. They didn't hear any evidence, but they'll say,
9 "Oh, gee. That sounds terrible."

10 Not fair. The lawyers are satisfied that you
11 fourteen people can be fair and impartial, so wait till it's
12 over before you talk to anybody.

13 Even amongst yourselves, ladies and gentlemen, you
14 can't discuss the case. That's the hardest job of all
15 because when you come back Monday and you'll be sitting
16 upstairs, you've been up there now, I want to thank you, by
17 the way. The officers tell me that you were all here
18 promptly this morning and I appreciate your cooperation and
19 we didn't get started until now, so you're sitting up there
20 and you say well, "What did you think of the witness we saw
21 last evening? Remember that cop with all those pictures?"

22 You can't do that, either. Why is that? Now
23 that's not talking to other people. That's just talking to
24 yourselves. Why? Because you haven't heard the whole case
25 yet, so if you start to formulate an opinion before you've

1 heard the entire case, you'll make up your mind and then
2 once the mind is made up, it's hard to change, so it's not
3 fair. What you hear on Monday will affect what you hear
4 today, so you wait until the case is submitted to you for
5 your discussions.

6 There are a number of exhibits that have been
7 marked, we've reviewed them, some were questionable as to
8 whether they'll been admitted into evidence, others are not.
9 Whatever is in evidence is available to you, the jury,
10 during your deliberations so if you decide the case on the
11 evidence that's presented and the law as explained by the
12 Court fairly and objectively, you will have done your duty
13 as a juror.

14 Mr. Piacentile, you may open to the jury.

15 MR. PIACENTILE: Your Honor, Justice Tonetti,
16 counsel, Mr. Pellew, ladies and gentlemen of the jury. Good
17 morning.

18 The Court told you we're at that stage where I
19 make an opening statement. Folks, I don't testify. I'm not
20 under oath. The judge has already explained that. The
21 fellow sitting at that table (points), Antonio Mallet, was
22 indicted and it was through that process that he's formally
23 charged with four crimes and the fact that he's indicted is
24 not proof of anything. That's an accusation. The Court has
25 explained that as well.

1 What I'm going to do is go over the indictment
2 just to tell you what he's charged with. There are four
3 counts in this indictment. Murder in the Second Degree,
4 Manslaughter in the First Degree, Criminal Possession of a
5 Weapon in the Second Degree and Criminal Possession of a
6 Weapon in the Third Degree.

7 The Defendant is accused of the crime of Murder in
8 the Second Degree, committed as follows:

9 Antonio Mallet, on or about September 24, 1996, in
10 the County of the Bronx, with intent to cause the death of a
11 person, did cause the death of Michael Ledeatte by shooting
12 him.

13 Now on that first count you get some information
14 here. The date, September the 24th, 1996. The name of the
15 victim in this case is Michael Ledeatte, a 19-year-old boy.

16 The second count charges the Defendant, Antonio
17 Mallet, on or about September the 24th, 1996, in the County
18 of the Bronx, did cause the death of Michael Ledeatte while
19 acting with intent to cause serious physical injury to that
20 person by shooting him.

21 Now that's a different charge that covers the same
22 act or occurrence. It's a different legal theory, and at the
23 appropriate time the Court will explain to you the
24 difference in these various legal theories. Now there may or
25 may not be submitted for your final consideration any or all

1 of these charges. That depends on what the evidence shows
2 and what the Court thinks is appropriate for you to
3 determine.

4 But suffice it to say at this stage, even though
5 in one count he's charged with Murder in the Second Degree
6 and in the other count with Manslaughter in the First
7 Degree, we're talking about the same criminal act but in
8 one, murder, it says that with intent to kill someone, did
9 in fact kill someone.

10 The second one, which is the manslaughter with the
11 intent to cause serious physical injury, caused his death.

12 Now in this case I don't think they'll be much
13 dispute about the medical evidence and the extent of the
14 injury. You will hear indisputably that the victim in this
15 crime, Michael Ledeatte, was shot behind his left ear and
16 the bullet penetrated his brain and exited through the right
17 side of the head, so I don't think there's going to be much
18 dispute as to what the nature of the injury is.

19 What you determine that injury, what intent you
20 determine that injury and those actions manifested, that's
21 your deliberation; whether that was an act designed to cause
22 the death or whether that was an act intended only to cause
23 serious physical injury, as will be defined to you by the
24 judge, that's a determination for you to make.

25 The third and fourth counts are weapons

1 possessions counts. These may or may not be submitted to
2 you, but I'm going to go over them anyway.

3 The third count, the Defendant, Antonio Mallet, on
4 or about September the 24th, 1996, in the County of the
5 Bronx, did possess a loaded firearm, that being a firearm
6 with intent to use unlawfully against another and the fourth
7 and final count: The Defendant, Antonio Mallet, on or about
8 September 24th, 1996, in the County of the Bronx, did
9 possess a loaded firearm, that firearm possession not being
10 in the Defendant's home or place of business, and the
11 indictment is subscribed by Robert T. Johnson, the District
12 Attorney of Bronx County.

13 Now what does all that mean? Those are the
14 charges. That doesn't prove anything.

15 How is it that the People intend to prove those
16 charges? That's the outline, as the Court phrased it, that
17 I'm here to give you.

18 We'll have testimony from the medical examiner who
19 examined the body after the death occurred.

20 The testimony from the medical examiner will
21 reveal, as I said earlier, one gun shot wound entering in
22 behind the left ear, crossing across the brain and exiting
23 the right side of the head. One gun shot wound.

24 There is one eye-witness to this crime and his
25 name is Gregory Walker, and you should be hearing from him

1 most likely Monday. What you will hear from Gregory Walker
2 is that sometime at around 2:30 in the early morning of
3 September the 24th of 1996, in behind the loading bay area
4 of this Waldbaum's supermarket on East Gun Hill Road in the
5 Bronx, up by Gunther and Mace Avenue, he was present with
6 the deceased, Michael Ledeatte.

7 Michael Ledeatte will tell you so that they were
8 to deliver a stolen car to Mr. Mallet. He will tell you that
9 this is not the first time they had done this kind of thing.
10 He will admit to you, either on direct examination or on
11 cross-examination, that he's a car thief. This is what he
12 did for a living.

13 He will also tell you that he knew (pointing) Mr.
14 Mallet by a nickname, Cilo. No one's quite sure how to spell
15 it. I spell it C-E-L-O for the sake of argument; however
16 you want to choose to spell it in your own head, that's your
17 call. But he's going to tell you that he had met Cilo at a
18 particular auto wrecker in the Bronx called Alpine Motors.
19 That's A-L-P-I-N-E, Motors and that he had known Cilo from
20 seeing him and speaking to him some ten or twelve times in
21 the recent past. He will tell you that that night he was
22 going with Michael Ledeatte to back him up, and he'll
23 explain what he means by back him up. It's not what you
24 might think in the ordinary sense of the word.

25 But he will tell you he was there so that it was

1 his function basically to drive behind Michael Ledeatte in
2 that stolen car so that the rear plate of the car would not
3 be visible to anyone who might wish to see the rear plate of
4 the car, as it was travelling through city streets.

5 He's going to tell you that he took up a position
6 in behind the Waldbaum's in a car with his lights out and
7 that he was there observing for maybe a distance of 120 feet
8 or so, and no one is going to kid you. This is not an area
9 that's lit brightly by anyone's description. It's a dark
10 area back there. You will see photographs. There's a
11 landmark, I suppose you can call it, in one of those
12 photographs of a dumpster, a green dumpster. He's going to
13 tell you that he was positioned by that green dumpster
14 looking down the building line in the area where Michael
15 Ledeatte was parked with this stolen car. The car, we'll
16 find out, was parked at, I suppose a 90 degree angle to the
17 place where Mr. Walker had his opportunity to observe. He's
18 going to tell you he saw Antonio Mallet and another person
19 who he didn't recognize drive into the area. He's going to
20 tell you that he saw an exchange between Mr. Mallet and Mr.
21 Ledeatte and that at one point in time
22 Mr. Mallet actually walks around to the passenger side of
23 the vehicle, giving him even a better look and he recognized
24 the person Cilo that he knew from Alpine Motors, the person
25 to whom they are supposed to deliver this stolen Lexus that

1 Mr. Ledeatte was killed in. He's going to tell you that he
2 then sees Mr. Mallet go back to the other side--with the
3 Court's permission--to the other side of the vehicle, the
4 passenger side, the driver's side, and now standing
5 somewhere in the vicinity of the driver's side of the
6 vehicle by the open window of the vehicle, he's going to
7 tell you that he saw his friend Michael Ledeatte
8 (indicating) reach down as if he were getting something and
9 it was at that point he saw a hand extended, heard the sound
10 of a gunshot, saw a flash, the interior light in the car was
11 on and then he sees Mr. Ledeatte in the back of the vehicle,
12 which brought him to the scene, and drive away.

13 He's going to tell you that he came up to his
14 friend and saw his friend, I suppose, in the throes of
15 death. And then he's going to tell you quite candidly that
16 what he did next, it's not very honorable, but perhaps
17 understandable in light of all the folks we're dealing with
18 here. He went to a phone booth in the front of the
19 Waldbaum's. In other words, this takes place behind the
20 Waldbaum's.

21 You're going to see and hear that if you come into
22 that Waldbaum's through the parking garage area off Gun Hill
23 Road there's two entrances and you're facing the outside,
24 the front of the Waldbaum's. This takes place in behind, an
25 area that the public generally never sees. There's a phone

1 bank in front of the Waldbaum's and you're going to hear the
2 first officers on the scene tell you that when they rolled
3 up, this fellow was still on the phone, this fellow Gregory
4 Walker.

5 Gregory Walker is going to tell you that when he
6 was on the phone, the last thing he said to the 911 operator
7 was, "Oh. I see the cops coming now." The police were on the
8 scene in under a minute. They said Gregory Walker was at
9 the phone bank and at first he denied any knowledge of this
10 thing.

11 He lied, the first thing he did, he'll admit that
12 to you, that he gave them a bunch of stories and it took a
13 while for the detective back at the precinct to talk to
14 him.

15 One of those detectives, the detective primarily
16 responsible for the breakthrough in the case, will tell you
17 that he had to work to gain the man's trust. Well, he'll
18 tell you what he has to tell you and that finally Mr. Walker
19 said Cilo. Cilo is the fellow who did the shooting and he
20 revealed how he knew Cilo and what the activities were that
21 led up to the incident in and behind the parking area.

22 That in essence is the case.

23 I ask everybody here, one witness, and a witness
24 who not only has a record as you now know, but who actually
25 told a different version of the story when first confronted

1 by the police.

2 Now you listen to what the man has to say. You
3 look at him. You make your evaluations of him based on
4 everything. Wait until the end of the case when all the
5 evidence is in on the case and you hear the arguments of
6 counsel and the instruction from the Court and then you make
7 a determination whether or not you believe, I mean, there's
8 no question.

9 See, this is a very narrowly focused case in terms
10 of what's in issue. I think everyone will agree on that at
11 the end. That there's no question somebody died, that
12 somebody died as a result of being shot in the head, and
13 that the homicide took place at that location.

14 Very few things are in dispute here. You may never
15 know why the gunshot was fired. There may be reasons that
16 you could surmise or reasons that you could guess at, but
17 that's not your job and the Court will instruct you at the
18 close of the case that although I have, as a representative
19 of the District Attorney's Office, I have a sole and
20 exclusive burden of proof in this case, I do not have, nor
21 at any time does the Prosecution have, the burden of proof
22 to show motive because motive is a very elusive thing. I'll
23 talk about that in my closing statement, but the fact that I
24 cannot tell you a 100% with certainty that this was the
25 motive or that was the motive or that up there was the

1 motive. It makes no difference in terms of what you have to
2 do in terms of this case.

3 Your function here is going to be to listen to
4 what Gregory Walker has to say and you promised me that you
5 would and I made no secret of the fact that the man had a
6 record in his past and I don't think any secret was made in
7 voir dire that maybe he had given more than one version of
8 the story.

9 Listen to the explanation and see if you accept
10 it, see if it is consistent, see if it jibes with everything
11 and then make your determination, because at the close of
12 the day, if you believe Gregory Walker, then you have to
13 find Mr. Mallet guilty. All right?

14 So this trial shall now begin. Thank you.

15 THE COURT: Mr. Schneider, would you like to make
16 an opening statement?

17 MR. SCHNEIDER: Yes, thank you. Hi. I wasn't
18 going to, but after hearing Mr. Piacentile tell you what he
19 wasn't going to prove or what he can't prove, I want to get
20 up here and tell you what we will prove through his own
21 witnesses, what we will prove through his own testimony,
22 what we will prove through his own evidence and I'm
23 suggesting to you, ladies and gentlemen, that he could have
24 spoken to you for hours and hours about why he can't prove
25 motive, why he doesn't have to prove motive, why Gregory

1 Walker is not necessarily a very believable witness and he
2 spent timing talking about the indictment, murder,
3 manslaughter, weapon.

4 He spent time talking about the fact that there's
5 only one witness, only one witness, because that's all he
6 has. There's no scientific evidence. There's no
7 corroboration. There's no reliable witness who can in
8 anyway, in anyway substantiate, justify, explain Gregory
9 Walker's story, Gregory Walker's conduct, Gregory Walker's
10 unreliability.

11 You know, on one hand Mr. Piacentile said, well,
12 Gregory Walker has a few brushes with the law. A brush with
13 the law is, if you're a young kid and you're joyriding in a
14 stolen car, okay? Or you jump a turnstile or you get into a
15 fight and you get charged with assault--

16 THE COURT: Counsel, this is more in the way of a
17 summation. Don't do that. Just tell them what you expect to
18 show.

19 MR. SCHNEIDER: We expect to show that beyond all
20 doubt that Gregory Walker has at least three criminal
21 convictions for stealing cars in Connecticut. We will show
22 you--and stealing cars as a professional. Now maybe he's not
23 that good because he got caught three times, but we know
24 that the fact is: He is and was a professional car thief.
25 He is and was, has pending right now when he comes in here,

1 he will have an open case for a stolen car. He worked out a
2 deal with the People in Connecticut, the prosecutor's office
3 in Connecticut, to get probation for three cases. He had
4 probation on one case and he had two open cases, one case
5 where he ran away on, he never came back. They got him. And
6 on the same day on March 4th, one week ago, he went back on
7 two cases and he pled guilty on those two cases and got a
8 deal for probation concurrent with the first case, so he now
9 has three separate cases, probation, but in another city in
10 Connecticut they refused to give him a deal regarding the
11 fourth open case.

12 (Continued on following page.)
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1 MR. SCHNEIDER: This other city in
2 Connecticut where he has this open stolen car
3 case, they said we are giving it probation
4 concurrent with the other three cases. We will
5 require more. So, he did not take a deal for the
6 4th open case that he will tell you about when he
7 testifies and also, he also was involved in, I
8 would guess possibly hundreds. That is just a
9 guess, doing the math of stolen cars here in New
10 York that he never got caught.

11 MR. PIACENTILE: Okay to guess.

12 THE COURT: Sustained.

13 MR. SCHNEIDER: I expect to prove that
14 he will say that Michael Ledet who he was working
15 with or for, I'm not sure, the other car they
16 used to steal approximately seven cars per week
17 and he knew Michael Ledet for over a year before
18 Michael Ledet was killed. You do the math.
19 Okay.

20 So, I don't mean to guess. You can
21 figure a car a day, two, three a day. Take
22 Sunday off over the years working with Michael
23 Ledet. That is who he is. All right.

24 Do you know who else, someone who has
25 not been cooperative both with the police during

1 the initial investigation and he was someone --
2 that is not true. He was very cooperative, but
3 he was lying to then, right. So, the difference
4 between saying I'm not going to help you and then
5 saying, oh, yes, sir. I will give you this
6 information.

7 MR. PIACENTILE: Objection to the form
8 of the opening.

9 THE COURT: I sustain the objection.

10 You were right when you said you
11 weren't going to open because you were going to
12 sum up. This is what you say at the end of the
13 case; isn't it?

14 MR. SCHNEIDER: Not mutually exclusive.

15 THE COURT: That is true.

16 MR. SCHNEIDER: We will prove to you
17 that he did make -- we will prove to you through
18 his own witnesses that he made statements to the
19 police that were lies. On the written statement
20 in his own hand he wrote down, I swear that this
21 statement is true and he signed it and it was a
22 lie. It was a lie. Not just that he made a
23 mistake, black is white or blue verses gray.

24 We will prove he lied in that
25 statement. We will prove to you he has not been

1 cooperative with the police in that matter. We
2 will prove to you he has not been true with the
3 District Attorney's Office in coming to court.

4 MR. PIACENTILE: Objection.

5 THE COURT: Overruled. Go ahead.

6 MR. SCHNEIDER: We will prove to you he
7 had appointments to go with the D.A. where he did
8 not go to those appointments. We will prove to
9 you he was not available to the D.A. at the
10 number of addresses he told the D.A. to be at on
11 prior occasions. We will prove that to you
12 through his own witnesses.

13 Now, let's just look for a moment at
14 not just the fact he told different stories. We
15 will prove to you what those stories where he
16 told the intricate details of each lie that he
17 gave. We will prove to you at 2:38 in the
18 morning a few minutes after this shooting
19 happened, not saying by the way he wasn't there,
20 he, meaning Gregory Walker. Gregory Walker was
21 there. He found the body of Gregory Walker.
22 What did he do.

23 We will prove to you -- Mr. Piacentile
24 says he went to the phone, call 911. Didn't give
25 his name. He called 911. What did he say there.

1 He didn't say I just saw my friend shot. He
2 didn't say I just saw my friend shot and I know
3 who did it.

4 We will prove to you that he just said
5 on the initial call to the police I just went and
6 I am supposed to meet my friend in the back lot
7 of Waldbaum's at 2:30 in the morning and I
8 happened to find him there bleeding. That is the
9 thing he said. He is dead. Police come up on
10 the scene. You will hear from the witness. Took
11 him to the precinct as a witness.

12 Prove to you the first detective who
13 spoke to him at the precinct about three o'clock
14 in the morning just an hour or so after this
15 supposedly happened. He says this story to the
16 detective. He is not a suspect. We will prove
17 to you he was a witness and he tells the
18 detective I was supposed to meet my friend at
19 10:30. I don't know where my friend lives. He
20 told me to meet him in Waldbaum's 10:30. I got
21 there. He wasn't there. I went home. Ate
22 dinner. Came back 12:00, 12:30. I left. Came
23 back. Low and behold I found him in the car at
24 three o'clock in the morning.

25 He did not tell the detective I saw the

1 shooting. He didn't tell the detective I saw the
2 defendant. He didn't tell the detective anything
3 about Cilo. He said, I found my friend shot,
4 bleeding in the car three o'clock in the morning.
5 He is still in the precinct three o'clock, four
6 o'clock, five o'clock in the morning, 5:30 in the
7 morning he is talking to another detective who
8 speaks to him.

9 MR. PIACENTILE: Objection to the
10 nature of this.

11 THE COURT: Overruled.

12 MR. SCHNEIDER: We will prove to you
13 5:35 in the morning, we will prove to you through
14 his own witnesses that this witness, Gregory
15 Walker, makes another, second, separate statement
16 that he wrote to the detectives and he didn't say
17 a word about seeing the shooting at 5:30 in the
18 morning. He didn't say a word about Antonio
19 Mellet. He didn't say a word about Cilo. He
20 made up some convoluted thing about his friend
21 come to his house with cab fare. Needed eight
22 dollars. Borrowing money from a person, supposed
23 to meet him somewhere. He made it all up. It
24 sounded, if you didn't know anything about, about
25 this guy, say it sounds reasonable except he is

1 meeting somebody 2:30 in the morning Waldbaum's
2 back in the parking lots by the back. At 5:30 in
3 the morning no mention of seeing the shooting.
4 No mention of him. No mention of seeing anybody.
5 He is in the precinct still all night. All
6 morning. All afternoon. He doesn't leave.
7 Whether he is allowed to leave or not, I don't
8 know and I don't really think it matters
9 necessarily.

10 We will prove to you that the next
11 statement he makes at 8:30 a.m not three hours
12 after 8:30 p.m, 8:30 p.m. The first statement is
13 three o'clock in the morning, 5:30 in the
14 morning. Then there's no written statement again
15 until 8:30 p.m. while he is always in the
16 precinct.

17 We will prove to you he is then given
18 his Miranda warnings. He is given the rights
19 that you give to a suspect. We will prove to you
20 that suspect is interrogated, possibly
21 incriminating himself in a crime.

22 We will prove to you at that point 8:30
23 he mentions that he is now involved in stolen
24 cars with Michael LeDet. He mentions 8:30 p.m,
25 Cilo. He still, 8:30 at night, still doesn't say

1 he saw Cilo do the shooting. At 8:30 at night he
2 is still -- in a written statement that he makes
3 he doesn't say a word about him doing the
4 shooting.

5 So, more time passes, 8:30, 9:00
6 o'clock, 9:30, 10:0 o'clock, 10:30 p.m. A
7 written statement that Gregory Walker for the
8 first time after he is given his Miranda rights,
9 suspect being interrogated by the detectives,
10 been in the precinct night before to 10:30 p.m.
11 How long is that. You can do the math yourself,
12 continuously. Even the first time.

13 Now, for the first time he mentions him
14 doing the shooting. What does that say to you.
15 I suggest to you that we will prove to you that
16 that is the time he mentions someone else in
17 order to deflect the police attention from
18 himself to get himself out of hot water. He was
19 given Miranda rights. Say woo, wait a second.
20 It is not me. That is what we will prove to you.

21 We will prove it through his own
22 witnesses. Mr. Piacentile's own witnesses.

23 We will prove to you that everything
24 about the stolen cars, everything about Gregory
25 Walker and Michael LeDet, sure he and they were

1 involved in stolen cars, no, not one scintilla of
2 evidence or proof that Antonio Mallet was
3 involved in stolen cars at all except for the
4 word of a convicted stolen car person. Except
5 for the word of a person who had been placing
6 himself at the scene of a murder 2:30 in the
7 morning, Waldbaum's.

8 You shop in Waldbaum's, working at a
9 loading dock 2:30 in the morning. The fact they
10 went to Waldbaum's on Gun Hill Road, on the back
11 is Mace Avenue, Gunther Avenue. You will hear
12 about when you come into Waldbaum's in the front
13 you can enter on that left to go in the back,
14 Dunkin' Donuts or on the right drive around to
15 the left there's a loading dock on the side in
16 the back loading dock and there it is.

17 This murder happened in the back of
18 Mace Avenue by the loading dock. This man will
19 tell you he was at least forty to fifty yards
20 away at night in the dark. No way. No way. He
21 was probably further away from Michael Ledet.

22 I believe too, further away than the
23 end of the courtroom at night. He is going to
24 tell you that he had his lights on, lights off,
25 excuse me.

1 We will prove to you he had his light
2 off so no one else could see him. How did he see
3 them. There is some lights in this area back
4 there. Not where the car was and if he is going
5 to have the nerve, we will prove to you -- I
6 don't mean to be summing up.

7 THE COURT: You have started to. Why
8 stop now.

9 MR. SCHNEIDER: We will prove to you--

10 THE COURT: I will ask the jury to
11 decide the case here.

12 MR. SCHNEIDER: Not yet, Judge.

13 THE COURT: When you are finished they
14 will have heard all the evidence. I am being
15 facetious. Needless to say what either one of
16 these gentlemen have said right up to now is not
17 evidence in any way whatsoever.

18 Go ahead.

19 MR. SCHNEIDER: One hundred percent
20 correct, what I am telling you is not evidence.

21 What I am telling you is what we will
22 prove and what you will see and what you will
23 hear. It will be uncontradicted.
24 Uncontroverted.

25 So, while I have been telling you what

1 we will be proving it will be based on his
2 witnesses and I am suggesting to you we will
3 prove to you there's not one scintilla of
4 evidence to corroborate what Gregory Walker says
5 and a lot to contradict what he says about prior
6 inconsistencies.

7 We will prove to you that what he says
8 cannot be reliable and we will prove that through
9 his own witnesses. You will have to see whether
10 or not they can prove that he did it.

11 Thank you, ladies and gentlemen.

12 THE COURT: Mr. Piacentile, call your
13 first witness.

14 MR. PIACENTILE: May I approach just
15 briefly with counsel before I do.

16 (Discussion held off the record between
17 the attorneys.)

18 MR. PIACENTILE: Officer Timothy
19 Heedene.

20 Sgt. T-i-m-o-n-t-h-y H-e-e-d-e-n-e - having been
21 called as a witness by and on behalf of the
22 People in this case, after first being duly
23 sworn, testified as follows:

24 COURT OFFICER: In a loud voice state
25 your name.

1 THE WITNESS: Sergeant Heedene, 2919,
2 Manhattan South Task Force.

3 THE COURT: Proceed.

4 DIRECT EXAMINATION

5 BY MR. PIACENTILE:

6 Q. Good morning, Sergeant.

7 A. Good morning.

8 Q. Speak in a loud, clear voice. Speak to
9 the jury so they can hear you, all right.

10 What is your first name?

11 A. Tim.

12 Q. And your current rank is sergeant?

13 A. Yes, it is.

14 Q. How long have you been a member of the New
15 York City Police Department?

16 A. Almost eight years.

17 Q. I want to draw your attention back to
18 September 24th, 1996. Were you employed as a member
19 of the New York City Police Department on that date?

20 A. Yes, I was.

21 Q. What was your rank on that date?

22 A. Police officer.

23 Q. What precinct were you working on that
24 date?

25 A. I was work 4-9 Precinct in the Bronx.

1 Q. Now, is the location 1750 East Gun Hill
2 Road within the confines of the 49th police Precinct
3 in Bronx County?

4 A. Yes, it is.

5 Q. Were you on patrol early in morning at
6 around 2:30 in the morning, 2:40 in the morning, in
7 the confines of the 49th Precinct on September 24th,
8 1996?

9 A. Yes, I was.

10 Q. What kind of patrol were you doing, sir?

11 A. I was in a marked RMP doing robbery --
12 normal sector patrol.

13 Q. What is a marked RMP?

14 A. That is the radio patrol car you see on
15 the street every day. The blue and white.

16 Q. Were you in uniform or plainclothes?

17 A. Uniform.

18 Q. Were you alone or with someone else?

19 A. I was with my partner.

20 Q. Who was that?

21 A. Officer Giuliano.

22 Q. Was Officer Giuliano in plainclothes or
23 uniform?

24 A. He is also in uniform.

25 Q. Did there come a point in time around 2:40

1 in the morning when something happened on the patrol?

2 A. Yes.

3 Q. Tell the jury what that was?

4 A. We received a call over the division
5 radio.

6 Q. What is division radio?

7 A. Division radio is a radio such as this,
8 where central tells units in the field where to go and
9 what to do and what is happening.

10 MR. PIACENTILE: Record reflected when
11 he said a unit such as this, he held up, looks to
12 be a walkie-talkie that he has with him.

13 Q. Now, you received a radio communication at
14 approximately that time?

15 A. Correct.

16 Q. What was the nature of the radio
17 communication?

18 A. It was a communication for man shot in the
19 rear of Waldbaum's at 1750 East Gun Hill Road.

20 Q. When you received that communication were
21 you in your radio motor patrol car or were you on
22 foot?

23 A. In my radio motor patrol car.

24 Q. Do you recall approximately where you were
25 when you received that call?

1 A. I was about a minute away from Waldbaum's.

2 Q. After you received the call, what if
3 anything, did you do?

4 A. I proceeded immediately to go to
5 Waldbaum's. My standard procedure is ask central if
6 they have a call back for any further information. I
7 went into the Waldbaum's parking lot to see, to
8 investigate the circumstances of the call.

9 Q. Tell the jury what happened next?

10 A. There was an automobile there, a black
11 Lexus and there was a male inside. Had apparently
12 been shot.

13 Q. Where was this black Lexus located with
14 reference to this Waldbaum's Supermarket that you
15 referred to?

16 A. It was in the rear of the Waldbaum's by a
17 loading bay.

18 Q. Now, when you arrived at the rear of that
19 loading bay, do you recall what the lighting
20 conditions were?

21 A. Lighting conditions, there is lights back
22 there, but it is not brightly lit such as this room
23 would be.

24 Q. Now, when you pulled into the back of
25 Waldbaum's, from which side of Waldbaum's did you

1 enter into the rear area that you described as this
2 loading zone?

3 A. Looking at it from the front or rear?

4 Q. Sorry?

5 A. Look at Waldbaum's from the front or from
6 the rear?

7 Q. Let's assume that you were coming into the
8 Waldbaum's from the front?

9 A. Yes.

10 Q. All right. Go this way so the jury
11 understands. Waldbaum's is in front of you?

12 A. The Waldbaum's is in front of me. You
13 have to be on the right side of the Waldbaum's.

14 Q. That is the area that you came into?

15 A. Correct.

16 Q. Can you also access that rear area by
17 going around the left side of the Waldbaum's?

18 A. Yes, you can.

19 Q. All right. You went down the right side
20 as you face the front of Waldbaum's?

21 A. Correct.

22 MR. PIACENTILE: Your Honor, with
23 consent of counsel and court we had exhibits
24 premarked. I would like to make reference to one
25 of those now.

1 I hand to the sergeant what has been
2 pre-marked as People's 10.

3 Q. Sergeant what is that?

4 A. This is a map of the basic area where the
5 Waldbaum's is. Where I was doing patrol that night.

6 Q. So that diagram is a fair and accurate
7 representation of the streets in and around the
8 Waldbaum's that you are referring to?

9 A. Yes, it is.

10 Q. Are you able to point on that, on that
11 diagram, to the point of the diagram where the
12 Waldbaum's would be located?

13 A. I can use my pen so you know exactly what
14 I'm pointing to. The Waldbaum's would be right here
15 (Indicating) in this area.

16 Q. Where is the parking lot?

17 MR. SCHNEIDER: Indicating for the
18 record where he pointed.

19 MR. PIACENTILE: Yes.

20 THE COURT: Circle it.

21 MR. PIACENTILE: Judge, I tell what,
22 let me do this.

23 Q. Let me hand to the sergeant a sticker I
24 will mark it Waldbaum's. How is that.

25 THE COURT: A green sticker for

1 Waldbaum's. Go ahead.

2 Q. A green sticker. Would you take this
3 green sticker that I hand you, place it on the diagram
4 the approximate location where the Waldbaum's would be
5 located on that diagram?

6 A. (placing sticker.)

7 Q. Now--

8 MR. PIACENTILE: Records reflect the
9 sticker has been, has been affixed.

10 Q. Pointing with your pen or your finger,
11 whatever, are you able to show the jurors how you
12 entered into the Waldbaum's parking lot and got to the
13 rear area where the loading bays are?

14 A. This would be Gun Hill Road.

15 MR. PIACENTILE: He is indicating on
16 the map a road that is just to the -- just above
17 center running right to left.

18 MR. SCHNEIDER: That says Gun Hill
19 Road.

20 MR. PIACENTILE: Says road, but that is
21 Gun Hill Road.

22 Q. Go ahead.

23 A. There's an entrance right over here to Gun
24 Hill, to Waldbaum's parking lot.

25 Q. Would you do this, mark with two straight

1 lines--

2 A. Sure.

3 Q. --the approximate area where that entrance
4 is?

5 A. (marking exhibit)

6 Q. --on that diagram.

7 THE COURT: I forget how tedious you
8 can be at times. How important could it be how
9 he entered that God damn parking lot that we are
10 wasting time marking and everything else. Go
11 ahead.

12 Q. Where was the loading zone located?

13 A. The loading zone is in the back. Back of
14 Waldbaum's over here.

15 Q. Where were you approximately when you
16 received your call?

17 A. I was in patrol in this general area
18 (Indicating). Right over here.

19 MR. PIACENTILE: Record reflect he is
20 circling an area roughly Allerton Avenue
21 somewhere between Mickle and Westervelt and
22 Kingsland.

23 THE COURT: Record should also reflect
24 the Court's extreme patience.

25 Q. Came around the back. What else did you

1 see?

2 A. There was a car, black Lexus, parked in
3 back of Waldbaum's by one of the loading bays and
4 there was a male inside. Apparently had been shot.

5 MR. PIACENTILE: I ask this photograph
6 which has been marked People's one be shown to
7 the witness.

8 MR. SCHNEIDER: If I may speak. The
9 diagram has not been offered into evidence. No
10 objection.

11 THE COURT: I thought it was
12 pre-marked.

13 MR. PIACENTILE: It was premarked.

14 THE COURT: What is the purpose of
15 pre-marking?

16 MR. SCHNEIDER: For identification. No
17 problem with it being in evidence for the future.

18 THE COURT: All right. Let's clear
19 that up. If you are going to pr-emark things you
20 pre-mark them into evidence.

21 MR. SCHNEIDER: Fine.

22 THE COURT: To save the trouble of
23 asking you, fair and accurate representation, all
24 the rest of the stuff. You have seen it. You
25 looked at it. You agree to it.

1 MR. SCHNEIDER: Yes.

2 THE COURT: It is in evidence. Thank
3 you.

4 MR. SCHNEIDER: The record does not
5 reflect that. Now it reflects that.

6 THE COURT: The record reflects
7 premarked means in evidence, counsel.

8 Proceed.

9 MR. PIACENTILE: I ask People's one be
10 shown to the witness.

11 COURT OFFICER: (Handing exhibit to the
12 witness.)

13 Q. What is that a photograph of, Sergeant?

14 A. This is the rear of the Waldbaum's
15 shopping area. Showing the -- appears to be the black
16 Lexus in question at the loading dock.

17 MR. PIACENTILE: Now, I will ask that
18 what has been premarked as People's two be shown
19 to the witness.

20 COURT OFFICER: (Handing exhibit to the
21 witness.)

22 Q. What is that sergeant a picture of?

23 A. This is just a different angle of the back
24 of the Waldbaum's parking lot. Showing the black
25 Lexus and you can see the loading dock a will the

1 better in this picture.

2 THE COURT: Hold it so the jurors gets
3 a quick look at it. We will pass it around later
4 on. All right.

5 MR. PIACENTILE: I ask number three now
6 be shown to the witness.

7 COURT OFFICER: (Handing exhibit to the
8 witness.)

9 A. This is a closer up picture of the black
10 Lexus in question.

11 Q. When you first saw that black Lexus was it
12 as it appears there or was it somehow different?

13 A. The doors, door might have been closed.

14 Q. Was there someone in the car?

15 A. Yes, there was.

16 Q. Tell the jury, did you go take a look, see
17 who was in the car?

18 A. I saw somebody in the car. Somebody who
19 had been shot. Once I see somebody where it will be a
20 crime scene, as a general rule a good idea, if I can't
21 render medical assistance, not to contaminate the
22 crime scene. So, you don't want to get too close into
23 the crime scene.

24 Q. When you approached that Lexus for the
25 first time you looked into it; did you not?

1 A. Yes.

2 Q. What did you see upon looking in the
3 Lexus?

4 A. A male who apparently had been shot.

5 THE COURT: How did you make in
6 determination, apparently shot.

7 THE WITNESS: Three tremendous amounts
8 of blood and he was slumped over side ways
9 unresponsive bleeding pretty profusely.

10 THE COURT: Couldn't the person be
11 stabbed too?

12 THE WITNESS: That is why I say
13 apparently shot.

14 THE COURT: All right.

15 THE WITNESS: I can't -- he might have
16 been.

17 THE COURT: All right. At that point
18 you really didn't know?

19 THE WITNESS: Exactly.

20 THE COURT: It looked like he was dead?

21 THE WITNESS: Very close to it, your
22 Honor.

23 THE COURT: Not yet dead?

24 THE WITNESS: I don't know.

25 THE COURT: Don't know?

1 THE WITNESS: I don't know.

2 THE COURT: All right. What did you
3 do? Did you call for an ambulance?

4 THE WITNESS: Yes, sir.

5 THE COURT: Proceed.

6 Q. Did you try to render any medical
7 assistance at that time?

8 A. Myself personally, no.

9 Q. What observation did you make that leads
10 you to the conclusion this man may have been alive at
11 that time? Did you try to talk to him?

12 A. No. The conclusion that led me to believe
13 that he still may have been alive is he had free
14 flowing blood. Generally speaking when somebody is
15 gone their heart stops beating. Blood doesn't flow
16 freely any more.

17 Q. From where did you observe this person's
18 body, the blood flowing as you say?

19 A. From his head area.

20 Q. Any particular portion of his head area,
21 if you recall?

22 A. From what I recall the nose and the side
23 and back. It was kind of hard to tell exactly where
24 it was coming from.

25 MR. PIACENTILE: I ask what has been

1 premarked as People's four be shown to the
2 witness.

3 COURT OFFICER: (Handing exhibit to the
4 witness.).

5 Q. What is that a photo of?

6 A. This is just another photo of the car in
7 question. Where the man was in the back of the
8 Waldbaum's.

9 Q. People's five also?

10 A. This would be the same auto showing the
11 passenger side door and the passenger side of the
12 auto.

13 Q. Now, did you take those photos?

14 A. No, I did not.

15 Q. Were you present when they were taken?

16 A. I believe I was.

17 Q. Was a search conducted for any type of
18 evidence?

19 A. Yes.

20 Q. Who conducted that?

21 A. Crime scene unit personnel.

22 Q. Were you present when that was done?

23 A. I'm not sure what stages because crime
24 scene does -- it is also like a tiered process. They
25 don't do it all at once. They conduct an

1 investigation. I'm not sure if I was there for
2 actually these photos or for what evidence they
3 recovered because usually it is a multiple stage. I
4 don't want to put words in their mouth.

5 THE COURT: Sergeant, so the jury
6 understands what do you mean by crime scene?

7 THE WITNESS: A crime scene unit is a
8 specialize unit where we have a serious incident
9 such as homicide, forcible rape, serious crime.
10 We call what is called the crime scene unit
11 because they are specialists in gathering like
12 bullet fragments, hair, fibers, blood samples.

13 THE COURT: Fingerprints, if any?

14 THE WITNESS: Fingerprints. Exactly,
15 your Honor.

16 THE COURT: Did you do that in this
17 case, notify crime scene?

18 THE WITNESS: Correct. Yes, sir.

19 THE COURT: They did respond?

20 THE WITNESS: Correct.

21 THE COURT: Next question.

22 Q. Did medical technicians arrive on the
23 scene while you were there?

24 A. Yes, they did.

25 Q. How long did it take medical technicians

1 to arrive at that location after you had discovered
2 the person in the car?

3 A. Very rapidly. A few minutes.

4 Q. Were you there when they were there?

5 A. Yes, I was.

6 Q. And they obviously left; correct?

7 A. Correct.

8 Q. They took the person in the car with them?

9 A. Yes, they did.

10 Q. How long were they there before they took
11 the person in the car with them?

12 A. Just a few minutes. They got him. Put
13 him in the ambulance. Got him in the hospital for
14 medical treatment as quick as possible.

15 Q. Do you know what hospital this fellow was
16 taken to?

17 A. He was taken to Jacobi Hospital.

18 Q. Fellow in the car, are you able to
19 describe him at all? A male?

20 A. Yes.

21 Q. And what ethnic background do you recall?

22 A. He look like a male African-American.

23 Q. Are your observations able to lead you to
24 a conclusion as to his apparent age?

25 A. It was -- not really.

1 Q. Did you search the inside of the car?

2 A. No, I did not.

3 Q. Did you look on the inside of the car
4 after the medical technicians removed this fellow?

5 A. No.

6 MR. PIACENTILE: No further questions,
7 your Honor.

8 THE COURT: Cross-examination.

9 MR. SCHNEIDER: Sorry. Thank you.

10 CROSS-EXAMINATION

11 BY MR. SCHNEIDER:

12 Q. Good morning, Sergeant.

13 A. Good morning.

14 Q. The photographs that you have looked at,
15 is it fair to say when those photographs were taken by
16 crime scene a flashlight was used to illuminate the
17 area?

18 A. I imagine so, yes.

19 Q. You imagine so because as you look at
20 these photographs that are in evidence they are much
21 more illuminating than if one were to look at it with
22 the naked eye at 2:30 in the morning on the 24th;
23 correct?

24 A. Correct.

25 Q. It was dark back there; correct?

1 A. Correct.

2 Q. Dark by the car; correct?

3 A. Yes.

4 Q. And dark in the whole loading area with
5 certain lights on certain portions of the building;
6 correct?

7 A. Correct.

8 Q. Now, can you show us on that diagram, if
9 you would, where Wickham and Mace is, please?

10 A. Wickham is here and Mace is over here.

11 Q. Indicating, for the record, area of Mace
12 and Wickham which is at the rear of Waldbaum's fair to
13 say?

14 A. Yes, it is.

15 Q. Rear of Waldbaum's would be where the body
16 in the car was found behind Waldbaum's almost
17 virtually by -- on Mace Avenue; correct?

18 A. Correct.

19 Q. Do you remember speaking -- you and your
20 partner where the first officers on the scene; is that
21 right?

22 A. Correct.

23 Q. And as the first officers on the scene it
24 was your job to speak to the investigating detectives
25 who were assigned to case; correct?

1 A. No.

2 Q. Did you and your partner speak to any
3 investigating detectives?

4 A. I did not. My partner might have.

5 Q. Do you know a Detective Grimbale from the
6 night watch?

7 A. Doesn't sound familiar.

8 Q. How about a Detective Vigo?

9 A. I think I dealt with him before.

10 Q. Do you remember, if you do, you and your
11 partner, Guiliano, telling Detective Grimbale that you
12 were on patrol on Wickham and Mace, where you just
13 showed us, when you heard the call of the male shot at
14 the location? Did you tell that to any detective that
15 evening?

16 A. I may have.

17 Q. Actually 2:55 in the morning did you tell
18 that to a detective?

19 A. I don't remember that in particular.

20 Q. Does that refresh your recollection before
21 you made like a circle where you were patrolling at a
22 round the time just prior to receiving the call?

23 Does that statement refresh your
24 recollection that you were specifically at Wickham,
25 Wickham and Mace right by the rear of Waldbaum's when

1 you heard that call? Does that refresh your
2 recollection?

3 A. No.

4 Q. What is 9-Henry. What is that?

5 A. That is a sector term. The 9 stands for
6 the 4-9 Precinct and Henry means you break up a
7 precinct into different boundary areas called sector
8 areas. Henry would be Henry sector. That would be a
9 little piece of the precinct.

10 Q. And what is 1-9-4? Is that your car or
11 your identification?

12 A. 1-9-4.

13 Q. Yes. Does that sound familiar?

14 A. No.

15 Q. When you received the communication over
16 the radio, you showed us that walkie talkie type
17 radio?

18 A. Yes.

19 Q. Did you or your partner respond to that
20 immediate call. Respond orally on the radio?

21 A. Yes.

22 Q. And was it you or your partner that
23 responded; do you remember?

24 A. I'm not sure.

25 Q. Do you remember who was driving that

1 night? Who was what. Is call the recorder or
2 passenger?

3 A. I can refresh my recollection, my thoughts
4 from my memobook.

5 Q. Would you.

6 A. Yes. Yes, at that time Officer Giuliano
7 was the recorder.

8 Q. Is it fair to say that generally speaking
9 that the recorder is the one who is the passenger and
10 you are the driver; correct?

11 A. Correct.

12 Q. The recorder is the one, fair to say, that
13 responds on the radio more frequently than the driver
14 so you can concentrate on driving?

15 A. Generally, yes.

16 Q. Do you remember either you or Officer
17 Giuliano responding after you received the call
18 indicating that you're right around the corner?
19 You didn't hear any shots. Do you remember either you
20 or Giuliano saying that over the radio?

21 A. No.

22 Q. Just finally when you approached the rear
23 of Waldbaum's did any civilians approach you to
24 indicate that they were witnesses to the crime?

25 A. None that I recall.

1 Q. And did anybody, any civilians approach
2 you when you were there at Waldbaum's either first
3 coming there or when you were there indicating that
4 they had any information at all about what had
5 happened?

6 A. No.

7 Q. Did you ever learn the name of someone
8 named Gregory Walker?

9 A. No.

10 MR. SCHNEIDER: I have nothing else.
11 Thank you, sergeant.

12 THE COURT: Anything else?

13 MR. PIACENTILE: No.

14 THE COURT: Thank you, sergeant. You
15 may step down.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE COURT: Next witness.

19 MR. PIACENTILE: Detective John Mac
20 Andrews.

21 Det. J-o-h-n M-a-c-A-n-d-r-e-w-s - having been
22 called as a witness by and on behalf of the
23 People in this case, after first being duly
24 sworn, testified as follows:

25 COURT OFFICER: State your name, shield

1 and command for the record.

2 THE WITNESS: Detective John McAndrews
3 M-c-A-n-d-r-e-w-s. Shield number 912. Assigned
4 to the New York City Police Department's Crime
5 Scene Unit.

6 THE COURT: Proceed.

7 DIRECT EXAMINATION

8 BY MR. PIACENTILE:

9 Q. Good morning, Detective.

10 A. Good morning.

11 Q. How long have you been a member of the
12 crime scene unit?

13 A. Four and a half years.

14 Q. What are your responsibilities and duties
15 as a crime scene unit detective?

16 A. We respond to a scene. My
17 responsibilities at the scene are to conduct a search.
18 While I do that search I make note of any evidence
19 that I see at the scene. I record that scene in three
20 ways. I do a sketch, handwritten notes, I take
21 photographs. After I have done this I will -- any
22 evidence I do find at that scene I will take inventory
23 of, mark it in my notes. I will mark it pathogen. I
24 turn it over to the police officer who is safeguarding
25 the scene.

1 Q. Were you on duty early morning of
2 September 24th, 1996?

3 A. Yes, I was.

4 Q. Did you have occasion to respond to the
5 rear of a Waldbaum's Supermarket located at 1750 East
6 Gun Hill Road in the Bronx?

7 A. Yes, I did.

8 Q. Tell the jury how it was you came to be at
9 that location?

10 A. We were notified there had been -- a
11 person had been shot that was in critical condition
12 that was likely to die.

13 Q. Did you respond to that location?

14 A. Yes, I did.

15 Q. Alone or with someone else?

16 A. I had a partner that night, Detective Mike
17 Sheptuk.

18 Q. When you got there what did you see?

19 A. There was a car parked in the rear of
20 Waldbaum's by the loading dock and there was several
21 police officers and detectives on the scene.

22 Q. When you arrived there, observed that,
23 what did you do?

24 A. At that point, I said earlier I took a
25 walk through. Did another search. I did a rough

1 sketch of the area. Marking what evidence I saw.
2 Marking the car that was on the scene. Then I went
3 back and took photographs of that scene.

4 Q. You drew a rough sketch?

5 A. Yes, I did.

6 MR. PIACENTILE: I ask that the witness
7 be shown what has been premarked a People's 11.

8 Q. Detective, take look at that. What is
9 that?

10 A. I didn't hear you, sorry.

11 Q. What is that in front of you?

12 A. The finished sketch. When I went back to
13 the office that is the finished sketch of the scene,
14 not to scale. It is showing the rear of Waldbaum's
15 store. Parking lot area. Where the deliveries would
16 come into this area. Over here would be where the
17 trucks would come into it. Over here is a car that is
18 in question. These stairs that you see are lights
19 that are on. Over here is the stairs. Over here is
20 the vehicle that I spoke of.

21 Q. That is a blow up of your original
22 diagram; is that correct?

23 A. Yes, it is.

24 THE COURT: What is the number of that?

25 MR. PIACENTILE: Eleven, Judge.

1 THE COURT: Thank you.

2 MR. PIACENTILE: Yes, eleven your,
3 Honor.

4 BY MR. PIACENTILE:

5 Q. You took photographs; is that correct?

6 A. Yes, I did.

7 MR. PIACENTILE: I will ask that one
8 through five be shown, handed to the witness.

9 MR. SCHNEIDER: Sorry, one through
10 five?

11 MR. PIACENTILE: One through five.

12 MR. SCHNEIDER: Thank you.

13 Q. Do you recognize those five photographs?

14 A. Yes, I do.

15 Q. How do you recognize them?

16 A. I recognize these to be the photographs
17 that I took. I recognize them by sight. On the rear
18 there's a sticker. Has the crime scene run number on
19 it. Has the date. Has precinct in question. Has my
20 name on it and has my initials.

21 Q. You took those photographs?

22 A. Yes, I did.

23 Q. Do you recall approximately what time in
24 the morning of September 24th you took those
25 photographs?

1 A. Approximately 4:00 a.m.

2 Q. Now, at what time did you arrive, if you
3 recall?

4 A. About a quarter to four in the morning.

5 Q. At quarter to four in the morning was
6 there a person inside the car or was the person no
7 longer inside the car?

8 A. No. The person had been removed to the
9 hospital.

10 Q. I want to show you what has been -- you
11 say you looked. Did you look around for evidence?

12 A. Yes, I did.

13 Q. Did you find anything?

14 A. Yes, I did.

15 Q. What did you find?

16 A. There was a deformed lead bullet that was
17 behind the car.

18 MR. SCHNEIDER: There was?

19 THE WITNESS: Deformed lead bullet.

20 MR. SCHNEIDER: That was?

21 THE WITNESS: Behind the car.

22 MR. SCHNEIDER: Thank you.

23 Q. Did you photograph, did you mark in any
24 way or take a photograph of that in any way?

25 A. Yes, I did.

1 MR. PIACENTILE: I will ask that six
2 and seven be shown to the witness.

3 Q. What is depicted in the photographs that
4 have been received as six and seven?

5 A. Photograph six, that we're speaking of is
6 an overall view. It is the rear of the car. Several
7 feet behind it there's a plastic cup in the next
8 photograph.

9 Q. What is the significance of the plastic
10 cup?

11 A. There's a lead bullet in it under there.
12 The cup there is to protect it.

13 Q. And who placed the cup in that position
14 before the photograph was taken?

15 A. One of the police officers that originally
16 had responded to the scene.

17 Q. What is the photograph seven?

18 A. Photograph seven is an additional view.
19 It is with the plastic cup removed. It shows a shiny
20 piece of lead which is a deformed lead bullet and then
21 there's a blue marker we carry. Those are the crime
22 scene rulers.

23 (Transcript continued on next page...)

24

25

There are no pages numbered 60-70.

1 Q. Now when you say deformed, what do you mean by
2 deformed?

3 A. Once a bullet is discharged through a gun, it's changed
4 and at that point it becomes deformed.

5 Q. And am I correct, this was a fragment?

6 A. It was a piece of a bullet, yes.

7 Q. All right. And what did you do with that piece of a
8 bullet?

9 A. After I took the photographs of it I measured it to see
10 where it was on the scene. I then picked it up, I etched it with
11 my initials M-1, which would be M for my last name, Mc Andrews,
12 and the 1 for being that first and only piece of evidence that I
13 took into that scene. I packaged it and I turned it over to the
14 police officer from the 49th Precinct that was safeguarding this
15 scene.

16 MR. PIACENTILE: I would also ask that 8 and 9 for
17 identification be shown to the witness, not to the jury.

18 Q. Detective, did you take those two photographs that are
19 marked 8 and 9?

20 A. Yes. I did.

21 Q. Do not show them to the jury, they're marked for
22 identification only. What is depicted in photographs 8 and 9?

23 MR. SCHNEIDER: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: It's an interior view of the auto

1 that's in question, which is a Lexus. Photograph number 8
2 is an interior view into the passenger front area and the
3 photograph number 9 is also an interior view. It's into the
4 driver's side front area.

5 Q. Now I want to draw your attention to photograph number
6 8. There appears to be a partially blue object. Does there not?

7 A. Yes. There is.

8 Q. Did you examine that object to see what it was?

9 A. Yes. I did.

10 Q. And what did that object, that partially blue object
11 depicted in that photograph, turn out to be?

12 A. It was a blue pair of pliers, blue handle silver
13 pliers.

14 Q. And do you know what happened to those after you took
15 the photograph?

16 A. They were left in the car.

17 Q. And the last you know they were in the car?

18 A. Yes. They were.

19 Q. All right. Thank you. Did you make an examination of
20 the crime scene?

21 A. Yes. I did.

22 Q. I want to show you People's 1. Would you please take a
23 look at that?

24 A. Yes.

25 Q. Does there appear to be some kind of shiny metallic

1 reflective surface just to the left of centre of the photograph?

2 A. Yes.

3 Q. Do you recall what that object is?

4 A. It's a trash dumpster that was located behind
5 Waldbaum's.

6 Q. Approximately, if you can, how far was that trash
7 dumpster from the car?

8 A. I do not know.

9 Q. You do not recall. Okay. Did you conduct any physical
10 tests upon the car?

11 A. No. I did not.

12 Q. Did you dust for fingerprints?

13 A. No.

14 Q. Did you try to collect any samples, anything?

15 A. No. Nothing.

16 Q. Other than taking the photographs and making the
17 observations which you've testified to today, is there anything
18 else that you did at that crime scene?

19 A. No.

20 Q. The diagram that you made of the crime scene, if I may,
21 that is People's 11, I believe. Yes. People's 11. Your diagram
22 ends on the right side of the diagram with a squiggly line?

23 A. Yes.

24 Q. How far down did building line does that sketch depict?

25 A. Just before the area of where those dumpsters are

1 located, it's to the right of all these lights.

2 Q. Where would the dumpster be located if it were to be
3 placed on that diagram?

4 A. It would be in this area right about here, by the wall.

5 Q. And the dumpster was what colour, do you recall?

6 A. I believe it was green.

7 Q. You believe it was green. Take this green dot and affix
8 it on your diagram in the approximate area where that dumpster
9 is located.

10 A. (Complies.)

11 Q. Thank you.

12 Would you then take this pen and just put a D, so
13 we keep it straight, just print the letter D inside the green
14 dot.

15 A. (Complies.)

16 Q. Thank you. And just so there's absolutely no confusion,
17 would you indicate what it is on that diagram that depicts the
18 location--angle that so the jury can see it--what is it on that
19 diagram that depicts the location of the vehicle in question?

20 A. Could you re-explain your question?

21 Q. Yes. You said there was a vehicle. Correct?

22 A. Yes.

23 Q. Did you include the vehicle in your diagram?

24 A. Yes.

25 Q. Where in the diagram is the vehicle?

1 A. This rectangle with the two lines on top is the vehicle
2 in question.

3 Q. All right. Last question: The photographs you took,
4 you utilized a flash to take those?

5 A. Yes. I do.

6 Q. What were the lighting conditions in and around the
7 back of that parking area when you got there?

8 A. Er, it was light enough to see, uhm, in this area here
9 there's a light, down on the parking lot there's a light,
10 against the wall there were three lights.

11 Q. Thank you.

12 MR. PIACENTILE: I have no further questions of
13 you, detective.

14 MR. PIACENTILE: Mr. Schneider?

15 MR. SCHNEIDER: Thank you.

16 MR. SCHNEIDER: Good afternoon, detective.

17 MR. PIACENTILE: Judge, sorry. Just, if I may?

18 With respect to 8 and 9, because they are not
19 premarked. I'm sorry.

20 THE COURT: You're going to offer those in
21 evidence?

22 MR. PIACENTILE: No, judge. I'm just going to--if
23 I may?

24 CONTINUATION OF DIRECT EXAMINATION

25 BY MR. PIACENTILE:

1 Q. Take a look at 8 and 9. Do not show them to the jury.
2 The scenes that are depicted in 8 or 9, those are interiors of
3 the car?

4 A. Yes. They were.

5 Q. Is that the front seat or the back seat?

6 A. Both photos are of the front seat.

7 Q. Both photos are of the front seat. Which seat?

8 A. Photo 8 is the passenger seat, front seat, and photo 9
9 is the operator, or the driver's front seat.

10 Q. The scenes depicted in photos 8 and 9, are they fair
11 and accurate representations of how the interior of that car
12 looked at the time you made your observations and took those
13 photographs?

14 A. Yes. They are.

15 Q. Thank you.

16 MR. PIACENTILE: Your Honor, I'm going to reserve
17 any application with respect to those photographs until--

18 THE COURT: Further testimony--

19 MR. PIACENTILE: Further testimony, yes.

20 THE COURT: Okay.

21 MR. PIACENTILE: I believe that's--that's all I
22 have of you, detective. Thank you.

23 THE COURT: Counsel?

24 MR. SCHNEIDER: Are you sure?

25 MR. PIACENTILE: Now I'm sure.

1 CROSS-EXAMINATION

2 BY MR. SCHNEIDER:

3 Q. You said that the deformed lead bullet was located
4 behind the car. Is that correct?

5 A. Yes.

6 Q. Now you came to learn from your investigation that that
7 had fallen out of the body when it was being transported to the
8 ambulance. Isn't that correct?

9 A. This I don't know.

10 Q. Well--

11 MR. SCHNEIDER: May I just have this deemed marked
12 Defendant's A for identification, please, your Honor?

13 THE COURT: Sure.

14 Q. Is that a document that you recognize, detective?

15 A. Yes.

16 Q. Would you look at the bottom of that document?

17 A. Yes.

18 Q. Is that a document that you completed?

19 A. Yes. It is.

20 Q. Now you say that you don't know, when I asked you about
21 the deformed lead bullet, is it fair to say that after your
22 investigation and after your discussions with other detectives,
23 you indicated that the deformed lead bullet possibly fell from
24 the victim and is being transported. Is that correct?

25 MR. PIACENTILE: Objection to possibly.

1 THE COURT: Overruled.

2 Q. Is that correct?

3 A. That's what I've been told.

4 Q. You had no reason to believe that that lead bullet was
5 somehow related to where the shooter was or where the victim was
6 at the time of the crime, do you?

7 A. No.

8 Q. May I have that back, please? Now may I just see those
9 photographs, if I may? Now you indicated, detective, that it
10 was light enough to see and then you showed us on the 'unscaled'
11 diagram where there were lights. Correct?

12 A. Yes.

13 Q. Now you also indicated where the dumpster was on that
14 diagram. Is that right?

15 A. Yes. I did.

16 Q. Now, do you have any recollection now, thinking back of
17 when you were there, granted it was two-and-a-half years ago, of
18 how far away that dumpster was?

19 A. No. I do not.

20 Q. And looking at, I believe this is People's 1 in
21 evidence, that's the dumpster that you're referring to, that
22 green metallic, shiny reflection. Isn't that correct?

23 A. Yes. It is.

24 Q. And are there any lights by that dumpster?

25 A. No.

1 Q. And the three lights that you referred to on the
2 diagram, those are the same lights that are depicted in People's
3 1 in evidence. Isn't that correct?

4 A. Yes. They're before the dumpster.

5 Q. And those are lights between the dumpster and the car.
6 Correct?

7 A. Correct.

8 Q. Are there any--withdrawn. Were there any lights back
9 in September 24, 1996, right above the car?

10 A. No.

11 Q. And of any of the photographs that were taken, did you
12 see any lights directly above the car?

13 A. No.

14 Q. And now you said that it was light enough to see and
15 you pointed to the three lights and the fourth and fifth light
16 across the way. Correct?

17 A. Yes. I did.

18 Q. Did you take any photographs without the use of a
19 flash?

20 A. No. I did not.

21 Q. And it's fair to say that when you--did you use a flash
22 on the camera or did you have lights that illuminated the area?

23 A. No. We have a flash to the side of the camera actually,
24 counsel.

25 Q. And the flash to the side of the camera is so that what

1 you're taking a picture of can be illuminated. Correct?

2 A. The flash is used to enhance the scene.

3 Q. And do you have at any point any photographs that you
4 took without the flash that we can compare with and without the
5 flash to see the lighting condition at the time?

6 MR. PIACENTILE: Objection.

7 THE COURT: Overruled.

8 THE WITNESS: As previously answered there, are no
9 photos without the flash.

10 Q. And is it fair to say that even looking, for. Example,
11 looking at People's Number 1 in evidence, where you can see that
12 dumpster and you see a reflection on that dumpster, correct,
13 like a white or silvery reflection. Is that correct?

14 A. Yes.

15 Q. Isn't it fair to say that reflection is from the flash
16 of the camera that you are taking at that time?

17 A. Answering that question, I can't say that it is
18 directly attributed to the flash. There are also the lights that
19 are along the wall that would also be illuminated behind it.

20 Q. Well, those lights along the wall are above the
21 dumpster. Correct?

22 A. Yes.

23 Q. And those lights--well, we see the lights on the
24 photograph. Correct?

25 A. Correct.

1 Q. So is it your position that the lights in the
2 photograph are the ones that are causing the reflection in the
3 dumpster?

4 MR. PIACENTILE: Objection.

5 THE COURT: Sustained.

6 THE WITNESS: It's part of the--

7 MR. PIACENTILE: Objection.

8 THE COURT: I sustained the objection. You don't
9 have to answer.

10 Q. Now looking at that photograph, People's 1 in evidence,
11 can you estimate how far the dumpster was from--by the way, this
12 dumpster is not a small dumpster, officer; it was a very large
13 dumpster that had to be moved by a truck. Right?

14 A. Yes.

15 Q. In fact, it's even attached to the building. Isn't
16 that right?

17 A. Yes.

18 Q. And the dumpster is maybe fifteen or twenty feet long.
19 Is that right?

20 A. I wouldn't know.

21 Q. But it's--okay. That dumpster, is it fair to say that
22 that dumpster is approximately forty or fifty yards from where
23 the car--

24 A. I wouldn't know.

25 Q. Well, can you look at that photograph and tell us if

1 you can make an estimate?

2 A. Not from looking at the photograph.

3 Q. Why not?

4 A. I just can't make an estimate looking in the dark, off
5 that reflection, of how far it would be.

6 Q. Well, is that because--would it look closer or further
7 in that photograph than in reality?

8 MR. PIACENTILE: Objection.

9 THE COURT: Sustained.

10 Q. Well, can you--withdrawn.

11 I believe I have nothing else sir, if you'll just
12 give me a moment.

13 I have nothing else. Thank you, detective.

14 THE COURT: Anything else?

15 MR. PIACENTILE: May I?

16 REDIRECT EXAMINATION

17 BY MR. PIACENTILE:

18 MR. PIACENTILE: May I just see the photograph one
19 second? May I have one question, judge?

20 Q. In People's 7, detective, the lights that are depicted
21 in your diagram, are they shown in People's 7?

22 A. This being the photograph?

23 Q. Yes.

24 A. Yes. They are.

25 Q. Do you recall whether they were on when you got there?

1 A. They were on.

2 Q. And does the photograph reflect that fact?

3 A. Yes. They do.

4 MR. PIACENTILE: No further questions.

5 THE COURT: Mr. Schneider?

6 MR. SCHNEIDER: Nothing, your Honor.

7 THE COURT: Thank you.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: Any other witnesses?

10 MR. PIACENTILE: Not for today, judge.

11 THE COURT: That's fine. We got the case started,
12 which is what I hoped to do today, and we'll resume this on
13 Monday.

14 You've heard some evidence. We're on our way. I
15 would ask you all to be back here Monday at 10:00, as you
16 were this morning. Don't forget, cooperate with us so that
17 we can have a full day on Monday and get the case going. We
18 might be able to finish it on Monday, who knows.

19 Have a nice weekend.

20 (The jury exits the courtroom.)

21 THE COURT: Gentlemen, See you Monday? You have
22 all your stuff, the Grand Jury minutes and all?

23 MR. SCHNEIDER: Yes, your Honor.

24 THE COURT: Okay.

25 (This trial is continued on the following Monday,

There are no pages numbered 84-86.

1 March 15th, 1999, at 10:00 A.M.)

2 (Continued on following page.)

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1 DATE: MONDAY, MARCH 15, 1999
2 SUPREME COURT OF THE STATE OF NEW YORK
3 BRONX COUNTY : TRIAL TERM PART XXXI
4 INDICTMENT NUMBER: 7180/96
5 PEOPLE OF THE STATE OF NEW YORK

6 -against-

7 ANTONIO MALLET,

8 Defendant

9 BEFORE HONORABLE LAWRENCE TONETTI,

10 J U S T I C E.

11 APPEARANCES AS PREVIOUSLY NOTED.

12 TRIAL CONTINUED.

13

14 * * *

15

16 (The following takes place in the
17 robing room:)

18 (Note the Defendant's absence at these
19 proceedings.)

20 THE COURT: Let the ordinary record reflect we're
21 presently in the robing room.

22 Present is the assistant district attorney and the
23 Defence lawyer. The Defendant is not present, and court
24 personnel.

25 I understand that this gentleman [Gregory Walker],

1 Mr. Piacentile, is going to be a witness for the
2 Prosecution?

3 MR. PIACENTILE: Yes, your Honor, that's correct.

4 THE COURT: Would you give your name for the
5 record, please?

6 MR. WALKER: Gregory Walker.

7 THE COURT: Okay. Mr. Walker, I have also been
8 advised that you have a case pending in the state of
9 Connecticut right now, an open case. Is that correct?

10 MR. WALKER: Yes.

11 THE COURT: I've also been advised that you have
12 some convictions on other cases here in New York. Is that
13 so?

14 MR. PIACENTILE: No, judge. If I may. He has
15 three cases in Connecticut wherein he's pled guilty and one
16 case in Connecticut wherein he is--that case is still open.

17 Now if I just may: Mr. Walker, the three cases
18 where you pled guilty, have you been sentenced on all those
19 three cases, sir?

20 MR. WALKER: Yes.

21 MR. PIACENTILE: Okay. So he has three sentenced
22 convicted larceny cases in Connecticut and one larceny case
23 in Connecticut still open and still pending.

24 THE COURT: Okay. All right. Now were you
25 represented by a lawyer up in Connecticut?

1 MR. WALKER: On the three convictions or on
2 the--on the prior one left, they want me to get my own
3 lawyer.

4 THE COURT: You didn't have a lawyer on the
5 convictions? You pled guilty?

6 MR. WALKER: Not my own lawyer, just a Public
7 Defender.

8 THE COURT: Oh. Okay. You had a lawyer, though?

9 MR. WALKER: Yes.

10 THE COURT: With respect to the three convictions
11 that you have, on which you've already been sentenced, if
12 you're asked on the witness stand whether or not you've been
13 convicted of a crime, you must answer truthfully that you
14 have and the lawyer may even ask you what those crimes were
15 about and you'll have to answer.

16 With respect to the open case, right, the open
17 case up in Connecticut where you still do not have a lawyer,
18 right, if he asks you about that case, that open case, you
19 have a right to refuse to answer on the grounds that it
20 might tend to incriminate you.

21 Do you understand that?

22 MR. WALKER: Yes.

23 THE COURT: To put it simply, you're aware of the
24 fact that he has an open case and that he is--doesn't have
25 to answer that question. I think you're entitled to elicit

1 that on the witness stand and that's the end of it.

2 MR. SCHNEIDER: If I may, your Honor, yes. I
3 understand, but also, as I mentioned before off the record
4 and if I just may?

5 THE COURT: Sure.

6 MR. SCHNEIDER: It was my belief and I think Mr.
7 Piacentile agrees, but he can speak for himself, that we or
8 at least I felt more comfortable if Mr. Walker had an
9 attorney advise him of his rights or his options as posed to
10 the Court; not that your Honor is wrong in what you have
11 said, but I just felt that it would have been more
12 appropriate to have an attorney speak to him.

13 THE COURT: And it certainly would be, I agree
14 with both of you. But we do not have a lawyer available. If
15 we had one, I would agree that that's the right way to go.

16 Do you understand that you have a right to have a
17 lawyer advise you of these things?

18 MR. WALKER: Yes.

19 THE COURT: I am advising you of these things.
20 I'm telling you that you don't have to answer, then the rest
21 is up to you. Do you understand that?

22 MR. WALKER: Yes.

23 THE COURT: If there's anything you don't
24 understand, ask me.

25 MR. WALKER: Yes. I totally understand, your

1 Honor.

2 MR. SCHNEIDER: If I may also your Honor, while
3 Mr. Walker, and I won't speak to Mr. Walker directly, but
4 Mr. Walker does have a right not to answer and exercise his
5 Fifth Amendment; he has a right, should he choose to, to
6 answer the questions if he feels that's the appropriate
7 thing to do and I would like your Honor to inform him of
8 that option--

9 THE COURT: I didn't do that, but I think it's
10 explanatory. You have a right to refuse to answer or you may
11 answer. That's up to you.

12 Do you understand that?

13 MR. WALKER: Yes.

14 THE COURT: Do you want me to get a lawyer for you
15 to advise you, or are you satisfied that you understand your
16 rights?

17 MR. WALKER: No. I understand, your Honor. I'm
18 satisfied.

19 THE COURT: All right, gentlemen.

20 MR. PIACENTILE: I take it his last response was he
21 says he understands?

22 MR. SCHNEIDER: He said he was satisfied.

23 THE COURT: All right. Take him outside, take him
24 outside into the outer hallway and we'll bring the jury
25 down. I'll be putting him on the stand in less than five

1 minutes.

2 MR. PIACENTILE: May I just speak to counsel and
3 the Court, your Honor?

4 THE COURT: Sure.

5 (Mr. Walker is escorted from the robing room.)

6 MR. PIACENTILE: This is off the record, your
7 Honor.

8 THE COURT: Yes.

9 (Off-the-record discussion.)

10 (In open court:)

11 THE COURT: Okay. Before the jury comes down,
12 let's call the case.

13 COURT CLERK: The case on trial. Note for the
14 record that the Defendant is present, his attorney is
15 present, the assistant district attorney is present. Absent
16 are our sworn jurors.

17 THE COURT: Good morning, counsel.

18 MR. PIACENTILE: Good morning.

19 MR. SCHNEIDER: Good morning.

20 THE COURT: As we have discussed off the record in
21 the robing room, the juryroom called this morning to advise
22 us that one of our sworn jurors, Mr. Farrelly, has called in
23 this morning to say that there's been a death in the family
24 and he had to go out of town. There wasn't any explanation
25 as to how long he'd be away or when he would return.

1 He also told the juryroom that he would try to
2 call the Court itself since he does have the number, he was
3 given the number by court personnel, but he hasn't thus far.

4 I have discussed this with counsel and I believe
5 that there's an agreement to substitute alternate number 1
6 for that sworn juror.

7 Is that correct, Mr. Piacentile?

8 MR. PIACENTILE: That's fine by the People.

9 THE COURT: And Mr. Schneider, do you agree?

10 MR. SCHNEIDER: Yes, your Honor.

11 THE COURT: Okay. And you've discussed that with
12 your client and he has no objection to it?

13 MR. SCHNEIDER: Yes. I have and he has no
14 objection.

15 THE COURT: Okay. Bring down the jury.

16 (The jury enters the courtroom.)

17 COURT CLERK: All right, your Honor, the change
18 has been made in the jury box, replacing Mr. Farrelly with
19 our alternate number 1.

20 The case on trial is continued. Note for the
21 record the Defendant, his attorney is present, the Assistant
22 District Attorney is present and all the sworn jurors are
23 present.

24 THE COURT: Good morning, ladies and gentlemen.
25 We had a problem this morning, one of our sworn jurors, as

1 you've been told, I believe, Mr. Farrelly, was unable to
2 make it.

3 There was a death in the family and he had to go
4 out of town and he wasn't sure when he would be back and the
5 lawyers have agreed to substitute alternate 1 so that we
6 could continue with our trial.

7 All that having been done and said, People, please
8 call your next witness.

9 MR. PIACENTILE: The People call Gregory Walker.

10 G R E G O R Y W A L K E R,

11 a witness called by and on behalf of the People, having
12 first been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PIACENTILE:

15 THE COURT: All right, Mr. Walker. You're going
16 to have to speak up so all these ladies and gentlemen of the
17 jury of the jury can hear you. Okay?

18 THE WITNESS: Yes.

19 THE COURT: Thank you. Go ahead, counsel--

20 Q. Good morning, sir.

21 A. Good morning, sir.

22 Q. Keep your voice raised, this is a big courtroom and we
23 need to hear your voice fill the courtroom. All right?

24 Tell the jury your name.

25 A. Gregory Walker.

1 Q. Mr. Walker, I want to direct your attention to
2 September the 24th, 1996. Were you present in or about a
3 Waldbaum's Supermarket located at 1750 East Gun Hill Road
4 sometime early in the morning of September the 24th, 1996?

5 A. Yes. I was.

6 Q. Louder.

7 A. Yes. I was.

8 Q. Mr. Walker, tell this jury the circumstances and events
9 that led up to your being in and around that Waldbaum's at about
10 2:30 in the morning on the 24th of September.

11 A. Well, my friend, my friend Michael Ledeatte, he had a
12 stolen car that was ordered by his--

13 MR. SCHNEIDER: Objection.

14 THE COURT: I didn't hear him so I can't rule on
15 the objection. Go ahead.

16 What did you say? You and your friend Michael
17 Ledeatte, he had a stolen car?

18 THE WITNESS: Yes. The car was to be delivered
19 behind Waldbaum's to, to the Defendant and er, we got on the
20 highway, 95, we got off at Gun Hill Road exit, Mike
21 proceeded in front of me, I drove behind him.

22 He then made a left into the Waldbaum's parking
23 lot, went around to the building. I then waited like a few
24 car lengths' behind, turned my lights off, went around and
25 witnessed Mike--there was a car parked to the farther end of

1 the building.

2 It was a white, small car. I'm not sure of the
3 descriptions what kind of car it was.

4 MR. SCHNEIDER: Your Honor, can I have the
5 reporter read what was said? I didn't hear him.

6 THE COURT: Yes. You feel free to move your seat
7 if you want to, but Kenny, can you read back the last
8 portion of his answer?

9 (Requested portion of proceedings read by court
10 reporter.)

11 THE COURT: All right. Try and keep your voice
12 up, all right? You're very soft spoken.

13 THE WITNESS: Then I saw the Defendant came out of
14 his car and went over to Mike and greeted each other and he
15 went around to the passenger side of the Lexus that Mike was
16 in.

17 I then witnessed another guy came from the corner
18 of the building and he then went around the car while the
19 Defendant went back around to the other side of the--the
20 driver's side of the car.

21 He then bent inside of the car. I assumed that he
22 was looking at how Mike started the car because of the way
23 he was bent inside. I then witnessed him slowly pull--all
24 this time he had his hand in his coat like inside his coat
25 (indicating).

1 THE COURT: Who is it that, you say, had his hand
2 in his coat?

3 THE WITNESS: The Defendant.

4 THE COURT: Tell the jury.

5 Q. Mr. Walker, you keep referring to the Defendant. Who do
6 you mean?

7 A. Cilo, that's how I know him as.

8 Q. Do you see Cilo in court?

9 A. Yes.

10 Q. Would you indicate who you mean when you say Cilo?

11 A. Uhm, I think his name is Antonio Mallet.

12 THE COURT: Do you see this person in court?

13 THE WITNESS: Yes.

14 THE COURT: Where is he sitting?

15 THE WITNESS: Right there, sir

16 (pointing).

17 THE COURT: All right. Indicating the Defendant.

18 Q. All right, now. When you say he had his hand in his
19 jacket pocket, who are you referring to?

20 A. To Mr. Mallet.

21 Q. Now, what happened next? What did you see?

22 A. Well, he looked inside of the car and he slowly came
23 out of the car and slowly took his hand out of his jacket and I
24 don't know what kind of gun it was, all I heard was one pop. I
25 then witnessed both guys, they run back to the car in front, the

1 white car, they sped off.

2 I drove up to Mike and I started calling his name
3 and he was just shaking (indicating) in the car. I then drove
4 around to the front of the Waldbaum's, made the 911 call and
5 that's when everything started. The cops came
6 and . . .

7 Q. Now you referred to Michael Ledeatte as your friend.
8 Correct?

9 A. Yes.

10 Q. How did you know Michael Ledeatte from before the date
11 of the incident?

12 A. Well, I met Mike a year before at a body shop. I was
13 there getting my car fixed and one of my friend introduced me to
14 him and ever since we become friends, and basically that's how
15 we met.

16 Q. What was the nature of your relationship with Mr.
17 Ledeatte?

18 A. Well, on occasion Mike was a car thief. He would take
19 orders from people and he would go out and he'll get the car and
20 have it delivered and what I'll do is I'll like back him up from
21 behind.

22 Q. Explain to the jury what you mean by the term back him
23 up from behind?

24 A. Well, to drive behind him so that if there should be
25 like a cop behind us he wouldn't be able to see the plate, so

1 the car wouldn't come up stolen, so we want to be on the safe
2 side all the time.

3 Q. Now on the night in question, in the early morning in
4 question, what kind of car was Mike Ledeatte driving?

5 A. A GS 300 Lexus.

6 Q. And do you recall what colour the vehicle was?

7 A. Black.

8 Q. Do you know how Michael Ledeatte came to be in
9 possession of that black GS 300 Lexus?

10 A. Well, yeah. Er, he told me that--

11 MR. SCHNEIDER: Objection.

12 THE COURT: Yes. I sustain the objection.

13 Q. Were you there when he took possession of the vehicle?

14 A. No. I wasn't.

15 Q. When for the first time did you see Michael Ledeatte in
16 possession of that vehicle?

17 A. When he actually he told me that he--

18 MR. SCHNEIDER: Objection, your Honor.

19 THE COURT: Yes. You can't tell us what he told
20 you.

21 THE WITNESS: Okay.

22 THE COURT: Where did you meet him that night?

23 THE WITNESS: I met him earlier in the day, during
24 the day.

25 THE COURT: Was he already in possession of that

1 Lexus?

2 THE WITNESS: Yes. He had made up with the
3 Defendant--

4 MR. SCHNEIDER: Objection. I ask that it be
5 stricken, your Honor.

6 THE COURT: I'm not sure what he said.

7 MR. SCHNEIDER: Then I would like a sidebar. I
8 don't want to repeat it in front of the jury in case it's
9 stricken.

10 THE COURT: You just can't tell us what he told
11 you. Do you understand?

12 You met him earlier during that day. He was
13 already in possession of the Lexus?

14 THE WITNESS: Yes. He was.

15 THE COURT: And did you agree to follow him in your
16 car?

17 THE WITNESS: Well, actually he wanted to move the
18 car off his block and I told him I was busy at that time, I
19 couldn't back him up, so what he did was he had the car, he
20 drove the car to Bronxville from Riverdale, that's where he
21 lived at and he had it moved from his block, then he took a
22 cab back home and he then told me that he had the car.

23 MR. SCHNEIDER: Objection. I ask that be
24 stricken.

25 THE COURT: Overruled. I'll allow that.

1 He told you he had a car?

2 THE WITNESS: He told me that he had moved the
3 car.

4 THE COURT: All right. Then what happened?

5 MR. PIACENTILE: If I may?

6 Q. When he told you that he had moved the car, are you
7 referring to the black Lexus?

8 A. Yes. I am.

9 Q. Now, when was the next time you had any contact with
10 Michael Ledeatte after that time?

11 A. On Tuesday, this happened like on the weekend, on
12 Tuesday, on the day of the shooting, earlier in that day we then
13 went do Alpine Motors where he went and he met up with the
14 Defendant.

15 THE COURT: Were you there?

16 THE WITNESS: Yes. I was the one that brought him
17 there.

18 THE COURT: Okay. Always talk to the jury.

19 THE WITNESS: Okay. I then--they were there
20 talking and I left it like that. I walked away while they
21 corresponded, made the arrangements--

22 MR. SCHNEIDER: Objection, your Honor. If he
23 walked away, how does he know what was said?

24 THE COURT: Overruled. Go ahead.

25 THE WITNESS: Then Mike came back to me and said

1 that, uhm--

2 MR. SCHNEIDER: Objection.

3 THE COURT: Go ahead. Mike came back to you and
4 said--overruled.

5 THE WITNESS: And told me that--

6 MR. SCHNEIDER: Your Honor, I'm sorry, but I'm
7 going to--

8 THE COURT: I'm going to allow it. I am overruling
9 the objection.

10 MR. SCHNEIDER: I understand. May we have a
11 sidebar?

12 THE COURT: No. You have an exception.

13 MR. SCHNEIDER: I understand, but sometimes the
14 record will--

15 THE COURT: It's hearsay and that's what you're
16 objecting to. Isn't it?

17 MR. SCHNEIDER: Well, it's more than that, your
18 Honor.

19 THE COURT: Well, I don't think so.

20 MR. SCHNEIDER: That's why I would like the
21 sidebar, to make--

22 THE COURT: Counsel, as soon as the jury is excused
23 you'll have an ample opportunity to make a complete report.

24 MR. SCHNEIDER: I'm trying to prevent him from
25 saying something that might be inappropriate.

1 THE COURT: Continue.

2 Q. Continue with your story, Mr. Gregory.

3 A. He then came back to me and told me he had to deliver
4 the car at that time, at that place, at Waldbaum's.

5 Q. At what time and at what place was that Lexus supposed
6 to be delivered in back of Waldbaum's?

7 A. Well, he never gave me a time exactly. I'm just saying
8 the time that he was there, not saying that he gave me the time.

9 Q. Now this took place at Alpine Motors. Correct?

10 A. Yes.

11 Q. Where is that located?

12 A. Off the Bruckner Boulevard.

13 THE COURT: What time of that day was this when
14 this was happening?

15 THE WITNESS: During the day, like in the
16 afternoon.

17 THE COURT: In the afternoon. And you were
18 present when he went to Alpine Motors? Did you go with
19 him?

20 THE WITNESS: Yes. I was the one that brought him
21 there.

22 THE COURT: In your car?

23 THE WITNESS: Yes.

24 THE COURT: And where was the Lexus at this time?

25 THE WITNESS: Well, he already had it in his

1 possession. He had it hidden, wherever he brought it.

2 THE COURT: Wherever he brought it, like you told
3 the jury he had moved it?

4 THE WITNESS: Yes.

5 THE COURT: But at the time you went to Alpine
6 Motors with Ledeatte, he did not have the Lexus?

7 THE WITNESS: No.

8 THE COURT: And there was a conversation there with
9 the Defendant?

10 THE WITNESS: Yes.

11 THE COURT: You saw that conversation?

12 THE WITNESS: Yes.

13 THE COURT: Did you hear what was being said.

14 THE WITNESS: Well, no; not at the time.

15 THE COURT: Okay. Somewhere there was an
16 agreement, according to what you were saying, to go to this
17 Waldbaum's packing lot later that night?

18 THE WITNESS: Yes.

19 THE COURT: Proceed.

20 Q. After this--withdrawn.

21 Was this the first time you had ever been to
22 Alpine Motors, either by yourself or with anyone else?

23 A. No. It wasn't.

24 Q. How many times had you previously been to Alpine
25 Motors?

1 A. Several, ten to twelve times I would say.

2 Q. Over what period of time had you been to Alpine Motors
3 ten two twelve times?

4 A. But each time it would be with Mike. He was the only
5 reason that I went--

6 Q. So each and every time that you went, you went with
7 Mike?

8 A. Yes.

9 Q. For how long a period of time would you be going to
10 Alpine Motors with Mike before the morning in question of the
11 shooting. Do you understand my question?

12 A. No. Could you repeat it, please?

13 Q. All right.

14 THE COURT: What he wants to know is you said you
15 went there ten or twelve times. Over how long a period of
16 time was that? Was it ten or twelve times in a week, in a
17 month, several months? You tell us.

18 THE WITNESS: No. Actually it would be more than
19 ten to twelve times, the time span, because it--over a
20 couple of months, yes.

21 Q. On any of those other occasions that you were at
22 Alpine, did you ever see or run into or encounter the Defendant?

23 A. Yes. I've seen him before there. Yes.

24 Q. Approximately how many times before the night in
25 question, the night of the shooting, had you seen the Defendant?

1 A. I've seen him with Mike say like ten times, ten times
2 or so. I've seen them a few times together because they used to
3 meet up there.

4 Q. And had you ever spoken to the Defendant before the
5 night in question?

6 A. Other than what's up, and stand by and they made
7 arrangements, then I'll step away from them. That's it.

8 Q. Now when you say they made arrangements and you would
9 step away, how many times did that happen before the night of
10 the shooting?

11 A. A few times, like whenever he needed cars.

12 MR. SCHNEIDER: Objection, your Honor.

13 THE COURT: Overruled.

14 Q. By what name did you know the Defendant on September
15 the 24th, 1996?

16 A. Just Cilo.

17 Q. How was it that you came to know him by that name?

18 A. Well, from meeting up with him and Mike, you know, I
19 know he was Cilo, everybody know he was Cilo.

20 Q. Now on the afternoon before the shooting took place,
21 you were at Alpine with Mike. Correct?

22 A. Yes.

23 Q. And you had driven Mike to Alpine. Correct?

24 A. Yes.

25 Q. After the conversation with Cilo had ended, did you

1 leave Alpine or did you stay?

2 A. No. We left.

3 Q. Both you and Mike left?

4 A. No. I left first. I left him there, went home, he
5 already made the arrangements and I went home. He wanted to
6 stick around to see what the guys were bringing in or whatever
7 new cars were coming in.

8 Q. And Mike told you that?

9 A. Yes.

10 Q. So you left him at Alpine?

11 A. Yes. And I was to go back and get him, but I had
12 arrangements to take my son to the doctor so I couldn't at this
13 time pick him up.

14 Q. Well, what happened later that day?

15 A. Well, he, he came to my house in a cab.

16 Q. Who is he?

17 A. Michael Ledeatte, the deceased. He had no money to pay
18 for the cab. I went to my next door neighbour and I borrowed I
19 think it was \$8.00 at the time, my neighbour gave it to me, I
20 paid the cab and I then took him back to the house in Riverdale.

21 Q. To his house?

22 A. Yes.

23 Q. Did you know where he lived in Riverdale or did he have
24 to tell you how to get there?

25 A. No. He actually showed me how to get there.

1 Q. Had you ever been to his house in Riverdale before?

2 A. I've been there before, but I wasn't really sure of the
3 directions because he's the one that showed me how to get there.

4 Q. So you dropped him off at his house in Riverdale.

5 Correct?

6 A. Yes.

7 Q. About what time of the day was that, if you recall?

8 A. Er, between--it was definitely in the evening hours,
9 say 7:00 or so.

10 Q. You're not exactly sure?

11 A. No. I'm not certain.

12 Q. After you dropped him off at his house in Riverdale
13 sometime in the early evening, what did you do?

14 A. I went back home to tend to my baby['s] mother and my
15 son. I made arrangements with him to pick him up at the time to
16 go deliver the car.

17 Q. To pick who up?

18 A. Mike Ledeatte.

19 Q. Now did there come a time later that day when you
20 returned to pick up Mike Ledeatte?

21 A. Yes.

22 Q. About was time was that? Tell the jury.

23 A. I'd say about twelve. I went over there about twelve.

24 Q. When you say twelve, do you mean midnight?

25 A. Yes, about that, nighttime.

1 Q. When you got there was Mike there?

2 A. Yes. He was.

3 Q. What happened when you got to Mike's place at around
4 midnight?

5 A. Well, he came, I rang the bell, he came downstairs,
6 then we drove to Bronxville to go get the car, the Lexus.

7 Q. Where was the car in Bronxville? Do you recall?

8 A. I don't know exactly where it was, the name of the
9 road, I'm not sure of that.

10 Q. And when you got to the car, this is the black Lexus,
11 when you got there, what happened?

12 A. Well, Mike got out of my car and he walked to the
13 Lexus. I like parked away from it. The door's already opened
14 because it was already broken into. He got in the car and
15 started it and--

16 Q. Did you see how Mike was able start this stolen Lexus?

17 A. Not at that point, no.

18 Q. Later in the evening did you get a chance to see how he
19 did that?

20 A. Well, he already told me how he did it with the plier
21 and so forth.

22 Q. All right. Later in the evening you did yourself see
23 how that was done?

24 A. Yes.

25 Q. Correct?

1 A. Yes.

2 Q. All right. Now you're in your vehicle, Mike is in the
3 Lexus. What happens?

4 A. Well, he stood there for a while, I guess he was
5 warming the car up and then, he then drove off, I made a U-turn
6 and then started my job backing him up.

7 Q. Now, how did you fellows get from Bronxville over to
8 the Wald--well, where did you wind up eventually?

9 A. To the Waldbaum's market.

10 Q. I'm sorry?

11 A. To Waldbaum's Supermarket.

12 Q. And that's the one over on Gun Hill Road?

13 A. Yes.

14 Q. By the highways?

15 A. Yes.

16 Q. And that's in the Bronx?

17 A. Yes.

18 Q. On the trip over, what did you do in order to, as you
19 say, back him up?

20 A. Well, I stayed like a car behind him, that way I'll be
21 the car behind him and not like right up under his plate, that
22 is very suspicious, like a regular routine and everybody is just
23 driving and er, I just stood behind him.

24 Q. What vehicle were you driving?

25 A. A 1990 Honda Accord.

1 Q. And was that your vehicle?

2 A. Yes. It was.

3 Q. Now, did you fellows go straight over to the Waldbaum's
4 or did you stop somewhere on the way?

5 A. Well, we stopped at a light and we waited for the light
6 and we spoke for a while and when the light changed he proceeded
7 ahead of me.

8 Q. And what happened?

9 A. Well, he got to the light. He made a left into the
10 parking lot.

11 Q. This light you're referring to, what light is it?

12 A. It's on Gun Hill Road. It's the entrance to the
13 Waldbaum's.

14 MR. PIACENTILE: All right. At this point I'm
15 going to ask that what has been received as People's 10 be
16 shown to the witness.

17 Q. You're holding a blowup of a map in front of you, sir.
18 Is that correct?

19 A. Yes.

20 Q. Do you recognize the area that's depicted in that map?

21 A. Yes.

22 Q. All right. Do you know where the Waldbaum's is located
23 on that map?

24 A. Yes.

25 Q. All right, if you could, if I may have permission to

1 approach the witness?

2 THE COURT: Sure.

3 MR. PIACENTILE: If we could just hold this so the
4 jury can see it.

5 Would you please point to the spot on the map
6 where the Waldbaum's is?

7 (Complies.)

8 MR. PIACENTILE: The record should reflect the
9 witness has put his finger to the green dot that's been
10 previously affixed to the map.

11 Q. Are you able to show to the jury, while pointing on
12 that map, where that traffic light is that you've been referring
13 to?

14 A. Right around here.

15 MR. PIACENTILE: Again, it's in the area where the
16 two parallel vertical lines have been drawn on the map
17 previously.

18 Q. All right. You're at that light. Who enters the
19 parking lot first, you or Mike?

20 A. Mike.

21 Q. And did you see where Mike went after he entered into
22 that parking lot?

23 A. After entering it he 'beared' left, went around the
24 building to the back from the left side.

25 Q. And what did you do?

1 A. Well, when he went around I had to wait for oncoming
2 traffic, so he went first and I had to wait, then I made the
3 left turn into the parking lot. I then turned my light off
4 because it's, it wasn't that bright around there so I didn't
5 want nobody knowing what was going on so I turned the light off
6 and I went around there and stopped at the corner of the
7 building.

8 Q. Now did you go around the corner of the building the
9 way Mike went or did you go around another way?

10 A. No. The same exact way.

11 Q. And tell the jury what was back there, describe the
12 back of that--

13 A. Well, there was a car parked next to the fence. It was
14 empty, and there was a dumpster to my right and Mike parked the
15 white car in front of him. That's about it.

16 Q. At that point in time were your headlights on or off?

17 A. They were out before I even came around to the spot.

18 Q. And at what point in time did you turn your headlights
19 off as you drove through that parking lot?

20 A. As soon as I entered into the parking lot and came
21 around to the left, I turned it.

22 Q. And you were able to see with your headlights out to
23 drive around the building?

24 A. Yes.

25 MR. PIACENTILE: I would ask the witness be shown

1 People's 11.

2 Q. Mr. Walker, you're holding in your hand a diagram which
3 has been received as People's 11. Do you recognize that diagram?

4 A. Yes.

5 Q. You've seen it before?

6 A. Yes.

7 Q. And what does that diagram depict?

8 A. That's the rear of the building, the light fixtures
9 here, the car right here where Mike was located, lights right
10 here, right here; about to the corner right here the other car
11 that was waiting.

12 Q. Could you point to a spot on that diagram which
13 approximates where the dumpster was located?

14 A. Around here somewhere.

15 MR. PIACENTILE: The record should reflect the
16 witness has rubbed his thumb across the green dot that's
17 been previously affixed to the diagram.

18 Q. Now around, using that diagram, where is Gun Hill Road?

19 A. Right here.

20 Q. Up to the top of the diagram. The witness has drawn his
21 hand across the top of the diagram.

22 The parking lot is up by Gun Hill Road, then.
23 Correct?

24 A. Yes.

25 Q. Are you able to show the jury, by tracing with your

1 finger the direction you took to come around that building, to
2 take the position that you finally took by the dumpster?

3 A. Well, I entered from the Gun Hill Road entrance here,
4 came around to the left. I hit my lights right about here.

5 Q. Indicating the left corner of the building?

6 A. And came around and just parked right here and just
7 observed what was going on, waiting on Mike.

8 Q. Now the dumpster, is that at the end of the building or
9 does the building extend past the dumpster?

10 A. Actually the building is extending past the dumpster.

11 Q. All right. Where in relation to the dumpster did your
12 vehicle go until coming to rest?

13 A. To like the corner of the building, somewhere
14 in-between the dumpster and the end of the building right about
15 here, like 140 feet away from the scene.

16 Q. Now, you were parked next to the dumpster?

17 A. No, sir. I was parked like to the edge of the dumpster,
18 closer to the end of the wall.

19 Q. Now--

20 MR. SCHNEIDER: Your Honor, indicating for the
21 record, Mr. Piacentile, where he just pointed? Would you
22 like to do that or would like me to do that?

23 Q. Where did you point to, Gregory?

24 A. The dumpster's here and the end of the building is like
25 right about here, the corner, because it's shaped like real

1 crooked, so right about here.

2 Q. So you're adjacent to the dumpster?

3 A. Yes.

4 THE COURT: All right.

5 Q. Now there's, I take it that behind that building
6 there's a roadway for cars and vehicles?

7 A. Yes. It's like a receiving dock for the trailers to--

8 Q. Were you parked closer to the building or closer to
9 the--well, what separates the end of the property line of
10 Waldbaum's from the street that's over here?

11 A. There's a fence.

12 Q. A fence?

13 A. Right here.

14 Q. Were you parked closer to the dumpster or closer to the
15 fence?

16 A. Closer to the dumpster.

17 Q. How far away from the building line were you--do you
18 know what I mean by the building line? From the wall of the
19 building--yes, now is it--let me ask you this: In front of the
20 dumpster here?

21 A. Yes.

22 Q. Is there a ramp?

23 A. Yes. There is a ramp right about here.

24 Q. Tell the jury about the ramp.

25 A. Could you repeat that question, please?

1 Q. Describe that ramp to the jury.

2 A. Well, there's a door right here next to the dumpster
3 and there's a ramp that goes down adjacent to right here, right
4 about there, about.

5 MR. PIACENTILE: I would like the witness to take
6 a look at what's been previously received as People's 7.

7 Q. Gregory, that's a photograph. What's depicted in that
8 photograph?

9 A. The car's there, you can see the dumpster from here and
10 if look closely the ramp's there too, and the door.

11 Q. Where in the photograph do you see the dumpster? Just
12 point for the jury.

13 A. (Indicating.)

14 MR. PIACENTILE: The record should reflect the
15 witness is holding up the photograph and there's a bright
16 spot just to the left, dead centre of the photograph, that
17 he's indicated.

18 Q. Is this the area you're indicating?

19 A. Yes.

20 Q. Hold that photograph up for the jury again. Would you
21 indicate by pointing where is this ramp that you're referring
22 to?

23 A. Er, in-between the dumpster and the wall right here.

24 MR. PIACENTILE: Again he's pointed to roughly the
25 same spot, but he's indicated just to the left of that spot,

1 as we look at the photograph.

2 Q. Is the area where your car was parked depicted on that
3 photograph?

4 A. Yes. I was right about here, just about where the
5 dumpster is.

6 Q. If I may, using this pen, Mr. Walker, put a G--can you
7 draw a G on the spot on that photograph where you were when this
8 incident took place?

9 (Complies.)

10 Q. All right. Thank you.

11 MR. SCHNEIDER: May I just see that, please?

12 MR. PIACENTILE: Yes, I'm showing it to counsel.

13 (Photograph is shown to Mr. Schneider.)

14 Q. Now Gregory, from where you were parked, your lights
15 were out at that point when you were parked by the dumpster?

16 A. Yes. They were out before I even came around the
17 corner.

18 Q. When you parked by the dumpster, in what direction were
19 you looking?

20 A. I was facing in front of me. I could see everything
21 that was going on in front of me.

22 Q. Do you see the black Lexus in that photograph?

23 A. Yes, the side of it (pointing).

24 Q. Would you please hold the photo up to the jury and
25 point to the blacks Lexus?

1 (Complies.)

2 MR. PIACENTILE: The record should reflect that
3 he's put his finger on what appears to be a car in the
4 left-hand side of the frame.

5 Q. From where you were in your car, did you have a direct
6 line of sight to that Lexus?

7 A. Yes.

8 Q. Was there anything in your way?

9 A. No. There weren't.

10 Q. Now you say that a second car--now Mike was already
11 parked in that loading bay. Correct?

12 A. Yes.

13 Q. This is People's 11 again, this is the diagram in
14 behind the Waldbaum's. You said a second car came behind that
15 Waldbaum's sometime later. Is that correct?

16 A. No. There was a car parked here already that was empty,
17 it was one of the worker's and the car that was waiting there at
18 the other end of the building.

19 Q. So there was a car waiting in that area where you've
20 just indicated?

21 A. Yes.

22 MR. PIACENTILE: Again to the left of centre of
23 the diagram.

24 Q. What were the lighting conditions back there at that
25 time?

1 A. Well, it wasn't that bright but it was where you could,
2 you know, recognize what was going on.

3 Q. And how many men got out of the car that you said was
4 to the left of centre of that diagram?

5 A. Well, (pointing) one came out from the car, from the
6 driver's side and walked back to the Lexus. He then greeted Mike
7 here and went around to the passenger side.

8 Then another guy came from the corner, not from
9 out of the car, he came from the corner of the building and he
10 walked over to the car, so then they switched places, the one
11 that was standing at the passenger side went back around the car
12 with his hand all the time in his pocket (indicating) and the
13 other one went around. He walked this side and he went back
14 around this side.

15 Q. Now the fellow who got out of the car--what colour was
16 that car? Do you know?

17 A. The one that he got out of?

18 Q. Yes.

19 A. White.

20 Q. Who--

21 THE COURT: The fellow that got out of the car,
22 did you recognize him?

23 THE WITNESS: Yes.

24 Q. Who did you recognize him to be?

25 A. As the Defendant, Cilo.

1 Q. And how long after that fellow got out of that car did
2 it take you to recognize him?

3 A. Well, just by seeing him, it took me no time.

4 Q. Tell the jury.

5 A. It wasn't hard for me, you know, because I've seen him
6 before and everything so it wasn't hard for me to try to
7 identify him or anything.

8 Q. Now at one point you say that the Defendant walked
9 around to the passenger side of the black Lexus. Correct?

10 A. Yes.

11 Q. Were you able to see him at that point?

12 A. Yes. All the time I was able to cover for everything.

13 Q. Well, it was dark behind there, was it not?

14 A. It wasn't dark, it was where you could see what was
15 going on. It wasn't bright like the courtroom, but it was that
16 you could recognize it because of the lights that was there.

17 Q. There came a time when the Defendant walked back around
18 to the driver's side of the vehicle. Correct?

19 A. Yes. He did.

20 Q. By the way, did you notice whether the doors to the
21 black Lexus were open or closed?

22 A. Well, when he first went around--

23 Q. When who first went around?

24 A. The Defendant, he opened the passenger door. He greeted
25 him here, then he went around, opened the door and bent in the

1 car. Then the other guy came around here, went around the
2 front, the Defendant went around the back and that's when he
3 bent in the car.

4 Q. When the doors to the car were open, did the interior
5 cabin light of the car come on?

6 A. Yes, it was.

7 Q. Tell the jury exactly what you saw leading up to what
8 you say was the gunshot you heard. What precisely did you see?

9 A. Well, I saw him bent in the car. He then slowly came
10 back out of the car with his hands at all times in his pocket
11 (indicating) then slowly pulled out what I assume is a gun, I
12 never seen it from where I was, but I seen him with the movement
13 of his hand (indicating).

14 Q. And he is who?

15 A. Is the Defendant.

16 Q. Go ahead.

17 A. Pointing to the back of Mike's head.

18 Q. Just before you heard the sound of a shot, did you see
19 what Mike did?

20 A. Well, he was like bent (indicating) toward the centre
21 console. I figured he was trying to show him how the car was
22 started or something because the ignition is like kind of down
23 to that side.

24 Q. Now you never saw--

25 MR. SCHNEIDER: Excuse me, your Honor. He made a

1 gesture when he said bent.

2 Would Mr. Piacentile like to make for the record--

3 Q. What was the gesture in your answer?

4 A. Well, his legs were sticking out of the car and he was
5 like (indicating).

6 Q. Was the driver's side door open as well as the
7 passenger door at that time?

8 A. Yes, both doors were open.

9 Q. And would you please, as best you can, show the jury
10 what position Mike was in just before the shot went off?

11 A. His leg sticking out and over on the armrest, there's
12 an armrest in-between the passenger and the driver and he was
13 bent over like this (indicating).

14 Q. Bent over toward the centre console of the car?

15 A. Yes.

16 Q. Was he bent down as he was going down at the waist?
17 Was he going down at the waist?

18 A. Well, actually he was, from where I was, I could just
19 see him like this (indicating).

20 MR. PIACENTILE: Indicating bent over the centre
21 armrest with his head down over the centre armrest or the
22 centre of the car.

23 MR. SCHNEIDER: I'm sorry, your Honor, from what
24 appeared to me the witness was bent at the side, not full,
25 bent sideways--

1 THE COURT: Leaning to the right.

2 Proceed.

3 Q. Leading to the interior of the car. What, if any
4 motion, did the Defendant make just before you heard the shot?

5 A. He was bent in the car looking in the car.

6 Q. He being?

7 A. The Defendant.

8 Q. Go ahead.

9 A. He slowly came out of the car and took his hand out of
10 his jacket, not out completely, I couldn't see what he had in
11 his hand, but to the point where I heard one pop. Then they
12 both--

13 Q. After the pop, then what happened?

14 A. They both ran, the guy that was on the other side ran
15 back to the car, he ran back in the car and they sped off. Then
16 I, I was shocked at what I had seen and I drove up to him.

17 Q. Up to who?

18 A. To Mike in the car. I then came out of--my car is
19 parked right about here at this point.

20 Q. Did you have your headlights on or off?

21 A. No, still off at all times. Then I walked over to him
22 and started calling him and he was just, I seen blood from the
23 back of his head. You know I started getting scared. I never
24 seen that.

25 Then I--

1 Q. Did you try to speak to Mike?

2 A. Yes. I was calling him like, Mike, Mike.

3 Q. And what, if anything, was his reaction?

4 A. He was just flickering.

5 Q. What do you mean flickering?

6 A. Like he was just (indicating) doing a shaking movement.

7 MR. PIACENTILE: The record should reflect the
8 witness is flexing his shoulder muscles.

9 Q. Is that a correct description, Mr. Walker?

10 A. Yes. Yeah.

11 Q. And did he make any response at all to you?

12 A. No.

13 Q. You observed that he was bleeding?

14 A. Yes. I seen the blood (indicating) coming down from the
15 back of his head.

16 MR. PIACENTILE: Indicating the left side of the
17 head.

18 Q. Well, at this point what did you do?

19 A. Well, I was scared. I got in the car and sped around
20 to the front. I seen some people coming in because it's a
21 Waldbaum's Shopping Market and I asked them if they heard the
22 shooting? that somebody got shot, and they said no. I asked
23 where the phone was? and they pointed, showed me where the
24 phone is. I drove up to the front, the phone was about here. I
25 got on the phone--

1 MR. PIACENTILE: Indicating the top centre portion
2 of the diagram when you said the phone is here.

3 Q. And you got on the phone and did what?

4 A. Called 911. I made the call.

5 Q. And did a--just answer yes or no, did a 911 operator
6 speak to you?

7 A. Yes.

8 Q. Now how did that 911 call come to an end?

9 A. Er, when the cops came I then hang the phone up and
10 went back around to the scene.

11 Q. So you saw the police arrive on the scene while you
12 were talking to the 911 operator?

13 A. Yes. I saw them started coming in from here, the
14 entrance right here (indicating).

15 MR. PIACENTILE: Indicating the left-hand side of
16 the diagram.

17 Q. And what, if anything, did you do at that time after
18 the police arrived at the location?

19 A. Well, I hang the phone up and drove back around here.

20 MR. PIACENTILE: He's indicating on the diagram to
21 the rear of the Waldbaum's.

22 Q. Go ahead.

23 A. Er, then there was just a whole bunch of cops that
24 started coming in, the ambulance and everything, and they
25 started asking me questions and put tape up there at the scene.

1 Q. Now Mr. Walker, do you recall what it was you first
2 said to the police at that location about what you had seen?

3 MR. SCHNEIDER: Objection.

4 THE COURT: Overruled.

5 THE WITNESS: Well, at first I was giving them a
6 lot of different stories because what I seen had happened to
7 Michael, I was, I was you know, I was scared right about now
8 and plus there was a stolen car, you know--I'm scared that,
9 you know, that, you know, because maybe it's going to be me
10 or I'm going to be stuck with a stolen car on me.

11 So they started asking me questions and I started
12 giving them information, but not the right information at
13 first.

14 Q. Did there come a time that detectives spoke to you
15 regarding this incident later that morning?

16 A. Yes. There did.

17 Q. When, if you recall, when did you first speak to a
18 detective? Was it behind the Waldbaum's or was it somewhere
19 else?

20 A. Well, I was speaking to a whole bunch of them here
21 (indicating), telling them exactly what I was telling them at
22 this point. Then they, one of the cops got in my car and drove
23 it back to the 49th Precinct and they put me in the patrol car
24 and took me back.

25 MR. PIACENTILE: The record should reflect that

1 when he indicated, I spoke to them here, he touched the
2 diagram at the lower left-hand portion of the roadway that's
3 depicted on the diagram.

4 Q. Now when you spoke to the detectives in that parking
5 lot, did you tell them what you told the jury today?

6 MR. SCHNEIDER: Your Honor, I object.

7 THE COURT: No. Overruled.

8 THE WITNESS: At first, no.

9 Q. Were you taken back to a police station in connection
10 with this case directly from the Waldbaum's?

11 A. Yes. I was.

12 Q. Did you hear my question, Gregory?

13 A. Could you repeat that for me?

14 Q. Were you taken directly from the parking lot to a
15 police station?

16 A. Yes. I was.

17 Q. And were you allowed to ride in your own car or did the
18 police take you?

19 A. No. The police took me and one of the cop[s] drove my
20 car.

21 Q. Now back at the police station house, did you talk to
22 the police about this case, yes or no?

23 A. Yes. I did.

24 Q. And yes or no, did you write and sign more than
25 one--did you, did you--you spoke to them at the precinct.

1 Correct?

2 A. Yes. I did.

3 Q. Were any of these conversations written out and signed?

4 A. Yes.

5 Q. Who wrote out the statements to the police, you or
6 them?

7 A. Well, I did.

8 Q. And did you sign any of them?

9 A. Yes. I did.

10 Q. Do you recall how many detectives you spoke to that
11 night at the police station?

12 A. A lot.

13 Q. And did there come a time when you met a detective by
14 the name of Kevin Tracy?

15 A. Yes. I did.

16 Q. Where did you meet Kevin Tracy for the first time that
17 morning?

18 A. At the 49th Precinct.

19 Q. And did Detective Tracy have a conversation with you?

20 A. Yes. He did.

21 Q. And what was it that you told Detective Tracy about
22 this case? Do you recall?

23 MR. SCHNEIDER: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: Well, basically I was giving him the

1 same story I was giving all the other detectives and then I
2 started crying and he was like, you know, why you being
3 scared? Why you being scared, you know, we could help you
4 and stuff and then we sat down and we really started getting
5 into it, what really happened at that time.

6 Q. Now you said that you had given the other detectives a
7 story and you made a motion with your hands. How was the story
8 that you were giving the detective from what you testified to
9 here? Do you recall?

10 A. Well, parts of the statements were true, but leading up
11 to what happened at that time of the night, that part was not
12 true.

13 Q. I want to show you what's been received as People's 2.
14 This is a photograph. Do you recognize the location that's shown
15 in that photograph?

16 A. Yes. I think so.

17 Q. What location is that?

18 A. Behind Waldbaum's, where the car was parked.

19 Q. And from what viewpoint is that photograph taken?

20 A. It's almost the same viewpoint as where I was, but I
21 was a little further back.

22 Q. And you said that there was a white car that was parked
23 by the side of the Waldbaum's?

24 A. Yes. There was.

25 Q. Is the area where that white car was parked visible in

1 that photograph?

2 A. Yes. It is.

3 Q. Could you please just put the initials WC, mark them on
4 that photograph, where the white car was parked, if you
5 remember?

6 (Complies.)

7 MR. SCHNEIDER: May I just see that, your Honor?

8 MR. PIACENTILE: Yes. Okay. Here you are.

9 Q. When you looked inside the car, did you see how Michael
10 had started the vehicle?

11 A. At the point behind the Waldbaum's or--

12 Q. Yeah.

13 A. Well, when I got there and he was shaking, he had the
14 plier in his right hand at that time.

15 Q. And do you recall what those pliers looked like?

16 A. Yes. It's a long plier with blue handles on it.

17 Q. And had you ever seen that pair of pliers in Michael's
18 possession before that evening?

19 A. Yes.

20 MR. PIACENTILE: I'm going to ask the contents of
21 this package be marked as People's 12 and then shown to the
22 witness.

23 (One pair of pliers is received and marked
24 People's Exhibit Number 12 for identification.)

25 MR. PIACENTILE: Would you please show People's 12

1 to the witness?

2 Mr. Walker, the court officer has in his hands
3 what has been marked as People's 12. It's a plastic package
4 containing an item.

5 Do you recognize the item that's visible through
6 the plastic packaging in People's 12?

7 A. Yes.

8 Q. What do you recognize that item to be?

9 A. The plier that he used to start the car.

10 Q. Is that Michael Ledeatte's pliers?

11 A. Yes.

12 Q. Those are the pliers you testified about earlier today?

13 A. Yes. It is.

14 Q. All right. Thank you. Now when you saw them in
15 Michael's hand shortly after the gunshot, what was he doing with
16 the pliers?

17 A. Well, he was bent over with the pliers in his hand
18 (indicating), assuming that's the way he started the car.

19 Q. Yes, but what did you see as he held that in his hand?

20 A. It was just in his hand.

21 Q. Was his hand shaking or moving?

22 A. Well, his body was (indicating) shaking. I wasn't
23 trying to look at what's really going on, I was trying to help
24 him.

25 Q. Did Michael Ledeatte ever utter a word to you after the

1 shot rang out behind the Waldbaum's?

2 A. No.

3 Q. Did you see whether or not--were you there to see
4 whether or not help was rendered to Michael Ledeatte?

5 A. Yes. I was.

6 Q. And were you there to see when he was taken away?

7 A. No.

8 Q. All right. Now I want to draw your attention to
9 September the 26th, 1996, two days after the shooting. Were you
10 called on the phone by the police two days after the shooting,
11 do you recall?

12 A. If I was called at home?

13 Q. Anywhere. Did the police make contact with you some two
14 days after the shooting?

15 A. Yes. They did.

16 Q. And do you recall what it was--well, where were you
17 when they made contact with you?

18 A. At my house.

19 Q. And do you recall who it was who called you?

20 A. Er Detective Nieves, I think, or Detective Tracy.

21 Q. And did they ask you to go somewhere?

22 A. Yes. They did.

23 Q. Where did you go at their request?

24 A. They took me to the 174 Precinct and they had a
25 lineup. I had to go--

1 Q. When you 174 Precinct, that's the 174th Street station
2 house?

3 A. Yes.

4 Q. Is that the one over by the Cross Bronx Expressway?

5 A. Yes.

6 Q. Okay. And when you got there, did they tell you why
7 they had called you to come there?

8 A. They told me that they had a possible suspect, the
9 person that I described him as, and they wanted me to make sure
10 if it was the person.

11 Q. Now when you got to that station house by the Cross
12 Bronx Expressway, did a detective meet you at that time?

13 A. Well, they brought me there.

14 Q. So they went to your house and got you?

15 A. Yes. They did.

16 Q. On the car ride over from your house to that police
17 station, did they tell you anything about what was to happen at
18 the police station once you arrived there?

19 A. That there was going to be a lineup and just choose or
20 pick who was the person.

21 Q. Now, did you in fact view a lineup at that police
22 station on that date?

23 A. Yes. I did.

24 Q. And what do you recall about that lineup? How was it
25 that they allowed you to look at this lineup?

1 A. Er, the guys were all, they all had hats on their
2 heads, black hats and a sheet up to their neck (indicating).

3 Q. And where were you when you were allowed to view these
4 fellows with the hats and the sheets?

5 A. Behind a screen, I guess a one way view thing.

6 Q. And did--were you alone in that room or were you with
7 some other police officers?

8 A. Yes. I was with other detectives in there.

9 Q. And did any of the detective issue you a set of
10 instructions just before allowing you to view the lineup that
11 you've referred to?

12 A. Could you repeat that, please?

13 Q. Did the detectives give you any instructions just
14 before they allowed you to view the lineup that you say you
15 viewed at that time?

16 A. Yeah, they said to take my time and make sure that I'm
17 picking out the right one.

18 Q. Now did you in fact, did you in fact have the
19 opportunity to look at a lineup that day?

20 A. Yes. I did.

21 Q. And were you in the same room as the fellows of the
22 lineup or a different room?

23 A. No, a different room just parted by a glass that you
24 look through, but they can't see through the glass.

25 Q. So they let you look through a two-way glass, the

1 detectives did?

2 A. It's like a one way glass.

3 Q. One-way glass?

4 A. Yes.

5 Q. So you could see in, but the other guys couldn't see
6 you?

7 A. Right.

8 Q. Did you pick somebody out of the lineup that you
9 viewed?

10 A. Yes. I did.

11 Q. Do you recall what number you picked out of that
12 lineup?

13 A. 4.

14 Q. Now did you tell the detectives who number 4 was?

15 A. Yeah. Yes. I did.

16 Q. And well, what did you tell them?

17 A. That it was Cilo. He asked me if that was the guy and I
18 said yeah.

19 Q. And is the fellow you picked out in that lineup who sat
20 in the number 4 spot, what was it that he had done that night,
21 the night of the shooting?

22 A. Er, everything I told you before.

23 Q. All right.

24 MR. PIACENTILE: I'm going to ask that this be
25 marked as People's 13.

1 (Bronx Homicide Task Force Lineup Sheet, dated
2 9/26/96, with small colour Polaroid photograph of a lineup
3 attached is received and marked People's Exhibit Number 13
4 for identification.)

5 MR. PIACENTILE: And shown to the witness.

6 (Shown to witness.)

7 Q. Mr. Walker, the court officer just handed you a
8 document with a photograph attached to it and that's People's 13
9 for identification. I want to draw your attention to the
10 photograph. Do you recognize that photograph or what's depicted
11 in that photograph?

12 A. Yes. I do.

13 Q. And what is depicted in that photograph?

14 A. The Defendant.

15 Q. Is that a photograph of the lineup that you saw on
16 September the 26th, 1996, that you just told this jury about?

17 A. Yes. It is.

18 Q. Is that a fair and accurate representation of how it
19 looked when you looked through the one-way or two-way glass
20 and--the one-way glass and saw it at that time?

21 A. Yes.

22 Q. Is that how the sheet was when you looked at it?

23 A. Yes.

24 Q. Is that how the hats were when you looked at it?

25 A. Yes.

1 Q. And that's a fair and accurate representation?

2 A. Yes. It is.

3 MR. PIACENTILE: I'm going to offer the
4 photograph, your Honor, as People's 13.

5 THE COURT: Any objection?

6 MR. SCHNEIDER: No objection to the photograph,
7 however, not to the document, though.

8 THE COURT: No. Just the photograph will be
9 received.

10 (Small, colour Polaroid photograph of lineup is
11 detached from the Bronx Homicide Task Force Lineup Sheet and
12 is marked separately as People's Exhibit Number 13 in
13 evidence.)

14 MR. PIACENTILE: Your Honor, I would ask that
15 People's 13 be shown to the jury at this time.

16 THE COURT: Well, they'll look at it some other
17 time.

18 MR. PIACENTILE: All right.

19 Q. Mr. Walker, has anyone discussed with you, I mean
20 anyone connected with this case, ever discuss with you the
21 findings of the medical examiner who examined the remains of
22 Michael Ledeatte? Yes or no, sir? Has anyone ever discussed
23 that with you?

24 A. Yes.

25 Q. Have they revealed to you what the medical examiner's

1 report said?

2 A. Well, they just said he was shot in the head and that
3 he wasn't going to make it.

4 Q. Do you know what a medical examiner's report is?

5 A. Er--

6 Q. If you don't, you don't.

7 A. No.

8 Q. You don't. All right. Who told you the that Mr.
9 Ledeatte had been shot in the head and wasn't going to make it?

10 A. Well, on the time--

11 Q. Who told you?

12 A. The detective told me at first and then when I went
13 over to the hospital to see him, the nurses told me that he
14 (witness shakes his head).

15 Q. Did anyone ever tell you how many times Mr. Ledeatte
16 had been shot in the head?

17 A. Well, at the time of the crime they said, the cops said
18 he was shot twice because of the entry of the bullet, it came
19 out on the other side, saying that he was shot twice.

20 Q. How many shots did you hear?

21 A. One.

22 MR. PIACENTILE: If I could just have a minute,
23 judge? I'm sorry.

24 THE COURT: Sure.

25 (Pause.)

1 Q. You testified that Michael drove the Lexus behind the
2 Waldbaum's first. Correct?

3 A. Yes. I did.

4 Q. And you arrived second. Correct?

5 A. Yes. I did.

6 Q. How much time passed from the time Michael went around
7 the back end of that building and the time you got around the
8 back end of the building and stopped by the dumpster?

9 A. Er, just seconds, you know.

10 Q. Do you remember whether or not Michael was driving with
11 his headlights on or his headlights off? Do you remember?

12 A. Well, he had it on, but when he hit the parking lot I
13 wasn't sure if he had it on or off.

14 Q. How far behind him were you at that time when he
15 entered this parking lot and began to go around the back of the
16 Waldbaum's?

17 A. Well, I stopped at the light waiting for the on-going
18 traffic while he proceeded back there. I just watched him go
19 around and then when I got the chance to go I made the left
20 also.

21 Q. Do you recall whether the Lexus had its headlights on
22 as it was parked in that loading bay that you've told the jury
23 about? Do you recall?

24 A. No. I'm not sure. I don't recall, no.

25 Q. You're not sure?

1 A. No.

2 Q. I just want to show you People's 2 one more time. Take
3 a look at that photograph. You've already seen it. You see the
4 car in the photograph?

5 A. Yes.

6 Q. That's the black Lexus. Correct?

7 A. Yes. It is.

8 Q. Does that photograph show the position that the Lexus
9 was in when Mike was shot?

10 A. Yes. It do.

11 MR. PIACENTILE: Your Honor, I believe that's it,
12 your Honor.

13 THE COURT: All right, ladies and gentlemen. I
14 believe we'll take our luncheon recess at this point and we
15 will resume the cross-examination of this witness at 2:00.

16 Don't discuss the case, keep an open mind.

17 (The jury exits the courtroom. After the jury
18 exits the courtroom, the witness descends the witness
19 stand.)

20 (This trial is adjourned until 2:00 P.M. this
21 afternoon after the luncheon recess.)

22 (Continued on following page.)

23

24

25

There are no pages numbered 142-154.

1

AFTERNOON SESSION

2

THE COURT: Case on trial. Jury down.

3

COURT OFFICER: Jury entering.

4

(Whereupon the jurors entered the

5

courtroom. All jurors are present.)

6

COURT CLERK: Case on trial continues.

7

For the record, Defendant is present,

8

his attorney is present, assistant district

9

attorney is present and also present are all

10

thirteen jurors.

11

THE COURT: Good afternoon, ladies and

12

gentlemen of the jury.

13

All right. Mr. Piacentile where is

14

your witness?

15

COURT CLERK: He is coming in.

16

THE COURT: Coming in.

17

(Witness, Gregory Walker, resumes

18

witness stand.)

19

COURT CLERK: Let the record reflect

20

the witness, Mr. Walker, resumes testifying.

21

Mr. Walker you are still under oath.

22

You have to tell truth. Please be seated, sir.

23

THE WITNESS: Yes.

24

THE COURT: Cross-examination.

25

MR. SCHNEIDER: Thank you, your Honor.

1 CROSS EXAMINATION

2 BY MR. SCHNEIDER:

3 Q. Mr. Walker, if I ask you anything that you
4 don't understand, just tell me. I will try to
5 rephrase it. You have to speak up.

6 A. Okay.

7 Q. It is a big courtroom. Lot of jurors. We
8 have to listen to what you have to say. It is
9 important.

10 Have you and I every met before? Have you
11 and I ever met before?

12 A. No.

13 Q. Have you and I every discussed this case
14 either in person on the phone in any manner, shape or
15 form?

16 A. No.

17 Q. Have you ever met Mr. Piacentile before
18 today?

19 A. Yes.

20 Q. In fact, over lunch were you in his office
21 today?

22 A. Yes.

23 Q. And whatever you have been going, have you
24 also been in the presence of detectives or police
25 officers?

1 A. Yes.

2 Q. And, now, you have seen that diagram that
3 you looked at this morning before today; hadn't you?

4 A. Yes.

5 Q. And you saw it in Mr. Piacentile's office
6 sometime before today; correct?

7 A. Yes.

8 Q. And he showed you that diagram and he
9 basically went over the questions that he would be
10 asking you and the answers you would be giving;
11 correct?

12 A. Kind of, yes.

13 Q. And he also showed you the previous
14 written statements that you had made to the police
15 back in September of '96; correct?

16 A. Yes.

17 Q. And he asked you to read those statements
18 to yourself; correct?

19 A. No. He actually read them out though.

20 Q. He read them to you?

21 A. Yes.

22 Q. And you and he, meaning you and Mr.
23 Piacentile, you discussed those statements that you
24 made to the police back in September of '96; isn't
25 that correct?

1 A. Yes.

2 Q. And he also gave you a copy of your grand
3 jury testimony; correct?

4 A. Yes.

5 Q. Did he let you read that or did he discuss
6 it and read it to you?

7 A. He actually asked me if I signed it and I
8 said yes.

9 Q. Now, the times that you have been
10 discussing the case with Mr. Piacentile, that was,
11 discussing the incident that happened back in
12 September of '96; isn't that correct?

13 A. Yes.

14 Q. Is it fair to say that you testified in
15 the grand jury in September, September 27th, 1996;
16 isn't that correct?

17 A. Yes.

18 Q. And from September 27th, 1996, until this
19 trial when was the next time you speak to a D.A. after
20 September 27th of '96?

21 A. I'd say like three weeks, four weeks ago.

22 Q. Three, four weeks ago from now?

23 A. Yes.

24 Q. So, in the whole of 1997 you never talked
25 to a D.A.; correct?

1 A. After everything was finished, the grand
2 jury in '97, no.

3 Q. The grand jury is finished in '96?

4 A. '96, right.

5 Q. Right?

6 A. Yes.

7 Q. So September of '96 was the last time up
8 saw a D.A. and you didn't speak to a D.A. in '97, '98,
9 and the first part of '99; correct?

10 A. Well, actually I spoke, spoke to Victor
11 last year sometime to make arrangements to come in and
12 speak to him about the case.

13 Q. Right. Then when you spoke to him that
14 was on the telephone; correct?

15 A. Yes.

16 Q. And you cancelled the appointment; didn't
17 you?

18 A. But actually I was still in fear of my
19 life.

20 Q. Listen to my question.

21 Question is, did you cancel the
22 appointment; yes or no.

23 A. Yes.

24 Q. Answer is yes?

25 A. Yes.

1 Q. In fact Mr. Piacentile had phone numbers
2 and addresses of you and your family.

3 Without telling us what they were, he had
4 ways to contact you; correct?

5 A. Yes.

6 Q. And over the years from September '96
7 until a few weeks ago he was reaching out to you and
8 your family begging you to call him back; right?

9 MR. PIACENTILE: Objection.

10 THE COURT: Sustained.

11 MR. SCHNEIDER: Withdrawn.

12 Q. Asking you to call him back?

13 MR. PIACENTILE: Objection.

14 THE COURT: Sustained.

15 Q. Did Mr. Piacentile leave messages for you
16 and your family?

17 MR. PIACENTILE: Objection.

18 THE COURT: No. Overruled.

19 A. Yes.

20 Q. And the fact -- and you received those
21 messages; didn't you?

22 A. Some.

23 Q. Did you receive those messages; yes or no?

24 A. Some of them.

25 Q. And the ones you received you ignored

1 them; isn't that correct?

2 MR. PIACENTILE: Objection.

3 THE COURT: Overruled.

4 Q. Isn't that correct?

5 A. Yes.

6 Q. And there were times when you, even the
7 one or two times a few weeks ago when you did speak to
8 Mr. Piacentile you told him would you come to his
9 office and you just never showed up; did you?

10 A. I had pending case.

11 Q. The answer is, yes, I never showed up;
12 right?

13 A. Yes.

14 MR. PIACENTILE: Objection.

15 THE COURT: Overruled.

16 Q. Right?

17 A. Yes.

18 Q. And you said you had a pending case.

19 The fact is, you had cases in Connecticut
20 which we will deal with in a few minutes; right?

21 A. Yes.

22 Q. At some point though either Mr. Piacentile
23 or some of the detectives were able to track you down
24 and find you in Connecticut; right?

25 MR. PIACENTILE: Objection.

1 THE COURT: Sustained.

2 MR. SCHNEIDER: Rather than track you
3 down.

4 Q. At some point you were found by detectives
5 from the District Attorney's Office in Connecticut;
6 correct?

7 A. Yes.

8 Q. You never voluntarily called Mr.
9 Piacentile or the Detective Tracy or any other
10 detectives to tell them where you were, how you could
11 be found; did you?

12 MR. PIACENTILE: Objection. Relevance.

13 THE COURT: Overruled.

14 Q. Did you?

15 A. I called Detective Tracy to try to locate
16 him, but he was not in the 49th Precinct anymore.

17 Q. When was that?

18 A. Few weeks before I started corresponding
19 with Mr. Piacentile.

20 Q. That was in 19 - - 1999?

21 A. Yes.

22 Q. And when you called the 49th Precinct to
23 find Detective Tracy did anybody tell you were
24 Detective Tracy was?

25 A. No.

1 Q. Answer is yes or no?

2 A. Yes.

3 MR. PIACENTILE: Objection.

4 THE COURT: Yes. Don't do that.

5 Q. Did anyone tell you where Detective Tracy
6 was?

7 A. No. They had to go back to the precinct
8 try to find him from there.

9 Q. Did you do that?

10 A. I made phone calls and they gave me a
11 number, but it was the wrong beeper number. Since
12 then I saw him in Mr. Victor Piacentile's office.
13 Gave me the right numbers.

14 Q. Gave you the right number after you had
15 already come in. This is after they found you in
16 Connecticut; right?

17 A. Yes.

18 Q. And after you had an open case in
19 Connecticut; correct?

20 A. Well, I already finish my case there.

21 Q. Both of them?

22 A. Just one I had left.

23 Q. Right. At some point you were found in
24 Connecticut and that is when you then continued your
25 relationship with the D.A's office and detectives.

1 Maintain contacts; correct?

2 A. Yes.

3 Q. And you said you were scared; is that
4 right?

5 A. Sure.

6 Q. Weren't you asleep in the District
7 Attorney's Office this morning before you came to
8 court?

9 A. Can you repeat that.

10 Q. Didn't you fall asleep in the ADA's office
11 before you testified here this morning?

12 MR. PIACENTILE: Objection. Relevance.

13 THE COURT: Overrule. I will allow it.

14 A. No.

15 Q. No you were not sleep this morning?

16 MR. PIACENTILE: How is one connected
17 to the other?

18 THE COURT: No problem.

19 Q. Is it fair to say that the District
20 Attorney's Office has promised to give you some money
21 after you testified here for moving expenses?

22 A. No. They said there is nothing they can
23 promise me, but after all this is over then we could
24 go over as far as my safe being is concerned.

25 Q. Were you told by either Mr. Piacentile or

1 someone from his office that you would get some
2 money--

3 A. No--

4 Q. --to move if you had to?

5 A. No.

6 MR. SCHNEIDER: May we approach the
7 bench, your Honor.

8 THE COURT: No. No.

9 MR. SCHNEIDER: Your Honor, if I may
10 have a sidebar.

11 THE COURT: No. No such thing in this
12 courtroom.

13 After the jurors are excused you can
14 make whatever record you like.

15 Mr. Piacentile is an officer of the
16 court. If he allowed the witness to fabricate
17 something of that nature, he knows the
18 responsibility he bears.

19 MR. SCHNEIDER: Fair enough.

20 THE COURT: Okay.

21 MR. PIACENTILE: Judge, may we have a
22 side bar.

23 THE COURT: No. No.

24 Who cares whether he fell asleep in
25 your office. I assume you probably were stupid

1 enough to tell him something like that. That is
2 why he is asking the question.

3 He says no. It is irrelevant. Has
4 nothing to do with the issue, issue in this case.
5 Let's get on to the issues that have
6 significance.

7 MR. SCHNEIDER: Your Honor I was passed
8 that issue. I was on the issue of the money.

9 THE COURT: The money. He may get
10 money. He may not get some money.

11 Did anybody promise to give you any
12 money?

13 THE WITNESS: No.

14 THE COURT: Next question.

15 BY MR. SCHNEIDER:

16 Q. Did anybody promise if you were to move
17 they would pay your experiences?

18 THE COURT: Problem with lawyers, you
19 never should talk to each other. You see, that
20 is what happens in the courtroom.

21 Go ahead.

22 MR. SCHNEIDER: What happens in the
23 courtroom. Asking a question that I have a good
24 faith basis to ask.

25 THE COURT: Come on. Ask the next

1 question. Somewhere we will get to what he says
2 he saw.

3 MR. SCHNEIDER: That is unnecessary.

4 THE COURT: It is necessary. You are
5 making it necessary.

6 MR. SCHNEIDER: No, I'm not.

7 THE COURT: Yes you are by arguing with
8 me. If you just followed the rules you would be
9 okay. There's no such thing as a side bar in
10 this courtroom.

11 MR. SCHNEIDER: That is all you had to
12 say.

13 THE COURT: I said that. You didn't
14 accept it so readily.

15 MR. SCHNEIDER: Actually, your Honor,
16 Mr. Piacentile asked for a side bar after me.

17 THE COURT: Did I give him one.

18 MR. SCHNEIDER: No. I moved on.

19 THE COURT: I treat both of you the
20 same way.

21 BY MR. SCHNEIDER:

22 Q. Is it fair, Mr. Walker, to say the
23 District Attorney's Office has promised to write a
24 letter to the district attorney in Connecticut on your
25 behalf?

1 A. No. They are - - actually said after
2 everything is over they'll give them a call and tell
3 them that I have cooperated with them.

4 Q. You just said no.

5 The question is, has the District
6 Attorney's Office, has Mr. Piacentile said to you I
7 will either write a letter or call the District
8 Attorney's Office in Connecticut, tell them that you
9 cooperated in this case.

10 Did he say to you he would do that for you
11 after you testified?

12 A. No. Just said he would make a call.

13 Q. What did I just say that was different
14 than what said?

15 MR. PIACENTILE: Objection.

16 Argumentative.

17 THE COURT: Sustained.

18 Q. Did Mr. Piacentile tell you he would call
19 on your behalf the D.A. in Connecticut who is
20 prosecuting you for stealing a car?.

21 MR. PIACENTILE: Objection to the on
22 behalf?

23 THE COURT: Overruled.

24 Q. Did he say--

25 A. He said he would call, yes.

1 THE COURT: Do you except the district
2 attorney to help you out; don't you?

3 THE WITNESS: Yes. I expect him to at
4 least.

5 THE COURT: Next question.

6 Q. Now, let's, if we can, Mr. Walker, on
7 February 7, 1998, about a year or so ago were you
8 arrested for stealing a car?

9 MR. PIACENTILE: Objection to the form
10 of the question.

11 THE COURT: Overruled.

12 Q. Were you arrested for stealing a car?

13 A. No. I was arrested for a warrant that was
14 served. I had to go there for stealing a car.

15 Q. For stealing a car?

16 A. I wasn't in possession.

17 Q. Of a stolen car?

18 A. Yes.

19 Q. Further, about a year or so later in
20 January '99 you plead guilty to the felony of larceny
21 in the 1st degree; isn't that correct?

22 A. Yes, I did.

23 Q. And what car did you steal; do you
24 remember?

25 A. It was a '90 - - it was a 1995 Honda

1 Accord.

2 Q. That was not from Mr. Antonio Mallet; was
3 it?

4 A. No.

5 Q. You did not steal any car for Cilo?

6 A. No.

7 Q. In Connecticut; did you?

8 A. No.

9 Q. This was after Michael Ledeatte had been
10 killed?

11 A. Yes.

12 Q. This, you were doing this on your own?

13 A. No. I - - actually, I was buying and
14 selling cars. Got hooked up with the wrong people.
15 The cars I sold before just started coming up stolen.
16 Everybody charge me for it, I was the one that sole
17 them. It is not like I physically stolen it myself.
18 It is - -

19 It was something going on where I was
20 buying cars from people and they were stolen already.

21 Q. Are you saying now at the time that you
22 bought the car from this person you didn't know it was
23 stolen?

24 A. It was not stolen until after the fact of
25 what happened --

1 Q. Listen to my question, sir. At the time

2 --

3 A. No.

4 Q. You didn't know it was stolen?

5 A. No.

6 Q. But you plead guilty; didn't you?

7 A. I had no other choice.

8 Q. When you plead guilty in front of the
9 judge in Connecticut on January 6, '99, that was Judge
10 Dean. Do you remember that?

11 A. Yes.

12 Q. Didn't Judge Dean ask you certain
13 questions about the crime when you plead guilty?

14 A. Yes, he did.

15 Q. Didn't he ask you whether or not you were
16 doing this voluntarily and of your own free will?

17 A. Yes, did he.

18 Q. Didn't he put you under oath to swear to
19 tell the truth?

20 A. Yes, he did.

21 Q. And he told you anything you said during
22 that plea allocution would be taken down under oath;
23 correct?

24 A. Yes, he did.

25 Q. He told you if you lied to the Judge

1 during that plea allocution you could be charged with
2 a separate charge of perjury; correct?

3 A. Yes, he did.

4 Q. At the time on January 6, 1999, before
5 Judge Dean under oath didn't you tell Judge Dean that
6 you knew you were guilty of larceny in the 1st degree;
7 didn't you tell him that?

8 A. I just want it over with so I plead guilty
9 to it.

10 Q. When you say you just wanted it over with,
11 is it your testimony that you told the Judge you were
12 guilty when in fact you were not guilty; correct?

13 A. Exactly.

14 Q. And you told the Judge you were guilty
15 because you knew that would be the easy way out of
16 that felony charge; correct?

17 A. It was easier way. I was still charged
18 with felony.

19 Q. You did get to jail; did you?

20 A. No, I got probation.

21 Q. You were given a choice. You could have
22 gone to jail for many, many years if you had gone to
23 trial and were convicted; correct?

24 MR. PIACENTILE: Objection.

25 THE COURT: Overruled.

1 MR. SCHNEIDER: If he knows.

2 Q. Isn't that correct?

3 A. No.

4 Q. Listen to my question, sir.

5 MR. PIACENTILE: Judge, can we have an
6 answer. You have to give him chance to answer.

7 THE COURT: He didn't say he didn't
8 hear you or understand.

9 MR. PIACENTILE: I ask he be allowed to
10 response.

11 THE COURT: Pardon me. Could you
12 repeat the question.

13 MR. SCHNEIDER: Certainly. I couldn't.
14 Forgot the question.

15 THE COURT: Ask another one.

16 BY MR. SCHNEIDER:

17 Q. Is it fair to say that the time that you
18 plead guilty that was pleading guilty and you were
19 promised if you plead guilty probation; isn't that
20 right?

21 A. Yes.

22 Q. You were promised you wouldn't go to jail
23 so long as you went along with the conditions of
24 probation; correct?

25 A. Yes.

1 Q. And you were told also by Judge Dean when
2 you plead guilty that if you choose not to plead
3 guilty which, was your right, you could go to trial;
4 correct?

5 A. Yes.

6 Q. And you he told you if you went to trial
7 and lost, he told you you would be facing years in a
8 Connecticut State prison; correct?

9 A. Yes.

10 Q. And at that time you told Judge Dean under
11 oath something that turned out to be a lie; is that
12 correct?

13 A. How that a lie, sir?

14 Q. You said you were innocent, right, but you
15 told him you were guilty?

16 A. Larceny first is when you are stealing a
17 car. I never stolen a car. I was just in possession
18 of the car.

19 Q. Okay.

20 A. But it started from New York and nobody
21 wanted to come to New York and get the real guys for
22 it. So, I was like, I'll take the charge for it. Get
23 it over with.

24 Q. My question to you, sir, is in order to
25 get it over with, in order to avoid going to jail you

1 told the Judge what he wanted to hear, that you were
2 guilty; correct?

3 A. Yeah. I pleaded guilty.

4 Q. But you weren't guilty; were you?

5 A. Not of stealing the car.

6 Q. Now, sometime after that, that was
7 February 7th, that was by the way in Norwalk,
8 Connecticut; right?

9 A. Yes.

10 Q. A few days later eleven days later on
11 February 18th in New Haven, Connecticut you also got
12 arrested again for the same charge, larceny in the 1st
13 degree; correct?

14 A. Yes, but I was charged twice with the same
15 charge.

16 Q. Yes. We will get to that.

17 In fact, you were charged in New Haven for
18 the same charge?

19 A. Yes.

20 Q. Right?

21 A. Uh-huh.

22 Q. The question is, you did steal a separate,
23 another car; right?

24 A. If you are to get into my history, what
25 has been going on in my life, it is whole lot more

1 than what you think. It is I'm going out there
2 stealing cars. It is not just right there, but it is
3 just the one I'm selling cars. They were holding me
4 responsible for it.

5 Q. You are the one selling cars that turn out
6 to be your bad luck, happen to be stolen?

7 A. Right.

8 Q. These cars that you just by bad luck
9 happen to be stolen, who do you get them from?

10 A. Guys in New York or from Manhattan.

11 Q. Not him; right?

12 A. No. Not from this happen. Never seen
13 this guy again. Stayed away from him.

14 Q. The fact is, you say guys in Manhattan you
15 bought cars, there was paperwork transferred back and
16 forth; correct?

17 A. Yes.

18 Q. There was paperwork that appeared to be
19 documents, seals, bill of sale?

20 A. Titles, everything.

21 Q. Turned out to be forgery; correct?

22 A. Yes.

23 Q. You did not know it at the time?

24 A. No.

25 Q. Now, every time that you bought and sold a

1 car that turned out to be stolen, you had no idea; yes
2 or no?

3 A. No.

4 MR. PIACENTILE: Objection to the form
5 of the question.

6 THE COURT: He answered.

7 A. No.

8 Q. Sorry?

9 A. No.

10 Q. No. You did not know it was stolen?

11 A. No.

12 Q. But yet on the February 18th arrest; right
13 the --

14 A. Yes.

15 Q. One in New Haven, you went back to court
16 on March 4th just eleven day ago; right?

17 A. Uh-huh.

18 Q. And you went back to court on March 4th.
19 What did you do on March 4th in court?

20 A. Took probation.

21 Q. Took probation. Meaning that you plead
22 guilty?

23 A. Yes, but not to a larceny. In the - -
24 larceny second.

25 Q. They gave you a reduced charge; correct.

1 You remember. You know the difference between first
2 and second. You know what it means to have a charge
3 reduced; right?

4 A. Yes.

5 Q. So knowing that you were given the option,
6 Mr. Walker, if you were incident you can go to trial
7 if you want or you can plead guilty to a lesser
8 charge; correct?

9 A. Uh-huh.

10 Q. Excuse me?

11 A. Yes.

12 Q. On March 4th you went before a different
13 judge, not Judge Dean, a different judge. Also you
14 were sworn to tell the truth; right?

15 A. Yeah.

16 Q. When you swear to tell the truth you were
17 told if you don't tell the truth that is it a separate
18 charge of perjury; correct?

19 A. Yeah.

20 Q. And the judge asked you a whole lot of
21 questions before he accepted your guilty plea;
22 correct?

23 A. Yeah.

24 Q. He told you that you were giving up all
25 kinds of rights. All kinds of constitutional rights;

1 correct?

2 A. Yes.

3 Q. And he also asked you specific questions
4 about the facts of what happened that lead up to your
5 pleading guilty; correct?

6 A. Yes.

7 Q. And you gave that Judge detailed facts as
8 to what happened; right?

9 A. No.

10 Q. He asked you if you were guilty; right?

11 A. Yes. I said --

12 Q. Asked you if you were guilty?

13 A. Yes. That was it.

14 Q. You lied to a judge again; correct.

15 A. It wasn't lying there.

16 Q. Well --

17 A. It was larceny second which would not be a
18 larceny first.

19 Q. Fair enough.

20 You say you didn't know at any time that
21 you had bought these stolen cars, you did not know at
22 any time they were stolen; right? Did you know they
23 were stolen?

24 A. No not at the time.

25 Q. So at the time you were innocent in your

1 mind for selling the stolen car?

2 A. Exactly.

3 Q. But yet not that you were innocent, that
4 you didn't do anything wrong, that you were trying to
5 do the right thing, buying and selling legitimate
6 cars, you still told the Judge I'm guilty. I admit
7 it; right?

8 A. (Nodding head.)

9 THE COURT: Yes. Says yes.

10 A. Yes.

11 Q. You did that knowing that you can get
12 concurrent probation, the probation you had before
13 from the January '99. Judge said I will give the same
14 probation to run the same time; correct?

15 A. Yes.

16 Q. You were able to say what you had to say
17 to keep yourself out of jail; correct?

18 A. Yes.

19 Q. Now, something happened again; right?

20 Supposed to come back.

21 A. No. I have one charge pending.

22 Q. Supposed to be back in court two days?

23 A. Yes.

24 Q. March 17th?

25 A. Uh-huh.

1 Q. On that case at this point they had made
2 you no promises. That judge on March 17th in Milford,
3 a different city, Milford, Connecticut?

4 THE COURT: March 17th, a year ago.

5 MR. SCHNEIDER: Due to court this
6 coming March 17th. Sorry, your Honor.

7 Q. The case you were due in is Milford;
8 correct?

9 A. Yes.

10 Q. That is an open case; correct?

11 A. Yes.

12 Q. You had not plead guilty on that case;
13 correct?

14 A. No.

15 Q. I will not ask you about the facts of that
16 case. That is an open case where you have a right to
17 protect yourself. Okay.

18 MR. PIACENTILE: Objection.

19 THE COURT: Overruled. I will allow
20 it.

21 Q. Okay?

22 A. Uh-huh.

23 Q. Isn't it a fact though that the last time
24 that you were in court on that case --

25 A. Uh-huh--

1 Q. -- you were told by the prosecutors and
2 judge, we are not giving you probation. We want you
3 to do some jail. That why you didn't plead guilty
4 that time; is that correct?

5 A. No.

6 Q. That didn't happen?

7 A. No.

8 Q. Hasn't there been a decision in the
9 Milford case whether or not they will give you
10 probation or not?

11 MR. PIACENTILE: Objection to what
12 decision. May have taken a plea.

13 THE COURT: Overruled.

14 Did they threaten you with jail?

15 THE WITNESS: No.

16 THE COURT: Okay. This case is the
17 open case?

18 THE WITNESS: Yes.

19 THE COURT: Is the one you are hoping
20 the D.A. will help you on?

21 THE WITNESS: Yes.

22 THE COURT: Go ahead.

23 BY MR. SCHNEIDER:

24 Q. There's another case in Bridgeport,
25 larceny 1st degree arrested. A few months after the

1 February 18th one is August of '98. Do you remember
2 that one?

3 A. Yes.

4 Q. And on that one there was a bench warrant
5 issued for your arrest; correct?

6 A. Yes.

7 Q. You were supposed to come back to court on
8 February 23, 1999, about a month ago and you didn't
9 go?

10 A. No. No, you have it confused. Milford
11 was one that issued the bench arrest.

12 Q. Okay.

13 A. I had my - - I was in an accident. I had
14 my papers and brought it there. They dismissed it.

15 Q. They vacated the warrant and you still
16 have the pending case?

17 A. Exactly.

18 Q. You plead guilty to the third case; didn't
19 you. You have three guilty pleas?

20 A. Uh-huh.

21 Q. And one open case; correct?

22 A. Exactly.

23 Q. And the third guilty plea that you entered
24 that was also on March 4th; correct? You entered,
25 entered two guilty pleas on one day?

1 A. Yes. I'm not sure.

2 Q. Right. And those two guilty pleas that
3 you may have entered on the same day, that was also
4 you plead guilty to something you said now you were
5 purely incident of; correct?

6 A. One of the them I wasn't innocent of. I
7 know for a fact I admit it, but one with the cars
8 totally different.

9 Q. What is the one you admit to being guilty
10 of?

11 A. Have I.D that wasn't me.

12 Q. Where did you get that from?

13 A. Got it from a friend.

14 Q. Who?

15 A. From somebody that you won't even know.

16 Q. Tell us. Maybe the detectives maybe
17 interested?

18 A. I already spoke to the detectives already.

19 Q. When was that?

20 A. From when I got arrested on.

21 Q. Sorry?

22 A. From I got arrest.

23 Q. In Connecticut?

24 A. Yes.

25 Q. I am asking you here, now, because you say

1 before there was some connection between New York and
2 Connecticut with stolen papers?

3 A. Same guys.

4 Q. Listen to my question. Stolen papers,
5 stolen cars, forged documents. Who did you get these
6 fake I.D's from?

7 MR. PIACENTILE: Objection. Relevance.

8 THE COURT: Sustain the objection.

9 Somebody on the street and you knew
10 they were forged; right?

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 BY MR. SCHNEIDER:

14 Q. Do you know somebody named Debbie Howell?
15 H-o-w-e-l-l.

16 A. Yes.

17 Q. Who is she?

18 A. My baby's mother.

19 Q. Are you presently having a relationship
20 with her now?

21 A. No.

22 Q. Back in 1994 you had a relationship with
23 her; correct?

24 A. Yes.

25 Q. July 5, 1994, did you and she have any

1 relationship?

2 A. Yes. Maybe, yeah.

3 Q. Sorry?

4 A. I'm not sure of the month, but, yeah, I
5 guess so.

6 Q. Sometime i; '94?

7 A. Yes.

8 Q. Do you remember in July, 1994 --
9 Withdrawn.

10 Does the location 1065 East 226th Street
11 sound familiar?

12 A. Yes.

13 Q. What is that?

14 A. That is where I reside at.

15 Q. Where you resided at back in '94?

16 A. Yes.

17 Q. Were you living there with her, Miss
18 Howell, as well?

19 A. Yes.

20 Q. Do you remember back then in July '94, on
21 the street you and Miss Howell being there. Something
22 happening. Do you remember that in July '94; yes or
23 no, if you remember?

24 A. On the road. No, not on the road.

25 Q. Sorry?

1 A. Not on the road, no.

2 Q. Do you remember having a ring on your hand
3 and punching her in the face causing her face to get a
4 laceration on the eye?

5 A. We had --

6 Q. Did you do that?

7 A. We had a dispute.

8 Q. Right.

9 A. I never punched her in the face.

10 Q. Did the cut on her eye happen out of thin
11 air?

12 A. No. It was self-defense.

13 Q. You did punch her, punch her in
14 self-defense?

15 A. It was not a punch. I was defending
16 myself and the ring scratched on her eye.

17 Q. As you were defending yourself against
18 Miss Howell had the - -

19 Withdrawn.

20 At the time you were defending yourself
21 against, hitting Miss Howell with the ring, you had
22 your hand up.

23 A. No. She had a pot to hit me. I was
24 trying to grab it. The ring cut her eye.

25 Q. As she was, she was hitting you with this

1 pot we have her face lunge itself into your ring. She
2 gets cut in the face.

3 A. No.

4 Q. You were defending yourself?

5 A. It was scratched. It was like it was a
6 punch. It is differ between a scratch and there was
7 no medical report saying she was punched or anything.

8 Q. How about the fact when the police came
9 they didn't arrest her. They arrested you; right?

10 A. The cops indicate because they saw the
11 blood they thought it was something enormous. They
12 took me to the 47th Precinct and afterwards they let
13 me out.

14 Q. But at the time you say they saw the blood
15 that appeared to be enormous --

16 MR. PIACENTILE: Objection. Not what
17 he said.

18 THE COURT: That is what he said.

19 Q. If I misstate what you say, I thought you
20 said --

21 THE COURT: He did say it. Come on.

22 Q. Saw blood. Thought it was enormous. Did
23 you tell them it is in self-defense. You should take
24 her into the precinct, too.

25 A. I never said.

1 MR. PIACENTILE: Objection.

2 THE COURT: Sustained. You don't have
3 to answer.

4 How old are you?

5 THE WITNESS: I am 24th.

6 THE COURT: Tell the jury?

7 THE WITNESS: Twenty-four.

8 THE COURT: Even though I ask a
9 question always speak to the jury. All right?

10 THE WITNESS: Yes.

11 THE COURT: Twenty-four?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right.

14 BY MR. SCHNEIDER:

15 Q. At the time Miss Howell was a number of
16 years older than you; correct?

17 A. Yes.

18 Q. She was twenty-six at the time?

19 A. Yes. I believe so.

20 Q. Now, why don't you, if you would, tell us
21 when you started stealing cars?

22 MR. PIACENTILE: Objection.

23 THE COURT: Sustained.

24 Q. You indicated that you met, knew Mike for
25 about a year; correct?

1 A. Yes.

2 Q. Did you steal cars before you knew Mike?

3 A. No. I was working.

4 Q. Sorry?

5 A. I was working.

6 Q. So when you finally met Mike you met him
7 at Alpine. You were getting your car fix; correct?

8 A. I never met him at Alpine. I met him at a
9 body shop.

10 Q. Sorry.

11 A. Yes.

12 Q. When you met him at the body shop, some
13 friend introduced you and you and he began to talk;
14 correct?

15 A. Uh-huh, yes.

16 Q. When you and he began to talk how did the
17 concept of stealing cars with each other, how did that
18 come up?

19 MR. PIACENTILE: Objection.

20 THE COURT: Overruled.

21 A. What happened was I was at body shop. I
22 was getting my car painted, bumpers painted and --

23 THE COURT: You have to keep your voice
24 up. The jurors are struggling to hear you.

25 A. Then I was get my car painted in the front

1 and one of my friends introduce me to him. I said --
2 he had some wheels for the Honda. I wanted wheels and
3 I ask him how much he wanted for it. Gave me a price.
4 We worked out a deal. I paid him for it. That is
5 when we became friends.

6 Q. My question though, sir, not how you
7 became friends.

8 How did you and he begin to steal cars
9 together?

10 A. Then, say few weeks ago after we became
11 friends he was like could you take me here. Could you
12 drop me off here. We weren't going steal cars. He
13 want me to drop him off certain places. Wasn't
14 stealing cars together.

15 Q. At some point isn't it fair to say that
16 you were helping Mike Ledeatte steal people's cars?

17 A. Not physically, no.

18 Q. Well, when I refer to stealing cars I
19 don't mean you have to be the one driving the car,
20 okay. So, let's move passed that.

21 A. Okay.

22 Q. Okay. Because you know the difference
23 between larceny one and larceny two; right?

24 A. I know it is a lesser charge. I don't
25 know the definition.

1 Q. Have you ever heard the phrase acting in
2 concert or being an accomplice with somebody. Heard
3 that phrase before?

4 A. Yes. Like being joined to what is going
5 on.

6 Q. Working with somebody to do something?

7 A. Yes.

8 Q. Illegally; correct.

9 A. Yes.

10 Q. So long as you both know that it is
11 illegal at the time you were doing it; right?

12 A. Yes. I know what you mean.

13 Q. My question to you, sir, even though you
14 didn't physically drive the car off the street, when
15 did you and Mike Ledeatte work as a team knowing you
16 were helping him steal cars?

17 A. A few months after I met him.

18 Q. Sorry?

19 A. Few months after I met him.

20 Q. Whose idea was that?

21 A. What.

22 Q. Who idea was that to begin stealing cars,
23 you or his?

24 A. No. That is the way he made his money. I
25 was working at the time when I met him.

1 Q. Is that the way you began to make your
2 money when you started working with Michael Ledeatte
3 helping steal cars?

4 A. I was make extra money on the side.

5 Q. He paid you?

6 A. Yes.

7 Q. How much did you pay you?

8 A. All depends like that, hundred dollars to
9 drop him, off pick him back up.

10 Q. You knew at the time also that you were
11 dropping him off, times you were picking him up and
12 times you were quote backing him up I think you said
13 this morning, you knew those were all an aid to him
14 stealing somebody's cars; correct?

15 A. Yes.

16 Q. Now, is it fair to say at the times that
17 you were helping Mike steal cars you and he went and
18 delivered car personally to different locations or
19 people; correct?

20 A. Yes. Back him up wherever he had to go.

21 Q. When you any back him up, that was for you
22 to prevent the police from seeing the license plate?

23 A. Yes.

24 Q. You didn't mean you were watching his back
25 to make sure anything was going to happen to him. You

1 didn't mean that?

2 A. I wasn't excepting nothing to happen.

3 Q. Every time that you were with him to
4 deliver cars you were there expecting the deal to go
5 down because it was between two consenting parties;
6 correct?

7 A. Exactly.

8 Q. You didn't watch his back. You never
9 brought a gun; did you?

10 A. Never held a gun in my life before.

11 Q. Neither did Mike. Never brought a gun as
12 far as you could see?

13 A. Exactly.

14 Q. The times you got caught in Connecticut
15 with stolen property or not, did you ever get caught
16 for stealing any of these cars in New York?

17 A. No.

18 Q. How many times did you help Mike steal
19 cars in New York that you didn't get caught?

20 MR. PIACENTILE: Objection.

21 THE COURT: Overruled.

22 A. A few times. No more than ten times.

23 Q. Fact is, is it fair to say when you spoke
24 to the detectives during the process on September
25 24th, you told them that Mike used to steal on an

1 average of seven cars per week; correct?

2 A. Yes.

3 Q. Did you work with Mike on all those deals
4 or he work separately from you?

5 A. He at times use me or have other friends
6 that he use.

7 Q. You stole the cars with him not as often,
8 not seven times a week. You have backed him up five
9 or ten times; correct?

10 A. Yes.

11 Q. Did you ever deliberately - -

12 Withdrawn.

13 Now, I think you said this morning even
14 though you had seen Antonio Mallet you never spoke to
15 him except to say what's up; right?

16 A. Yes.

17 Q. You and he never discussed any business
18 you and he; did you?

19 A. No. Just be there with him and Mike.

20 Q. You would step off; right?

21 A. Yes. They're getting into their own
22 thing.

23 Q. The fact is you never, you never ever
24 delivered any cars to Antonio Mallet; did you?

25 A. No personal. Mike.

1 Q. You were never there when he did it?

2 A. No.

3 Q. So you either with Mike or yourself, you
4 either with Mike or yourself never deliver any cars to
5 him or any location where he was; is that correct?

6 A. Not me, but Mike did.

7 Q. Listen to my question.

8 Either you alone or you and Mike together
9 that never, that combination, never delivered any cars
10 to him any where; did you?

11 A. No. No.

12 Q. And you were never present in any location
13 anywhere when somebody else brought cars to him; were
14 you?

15 A. Well, I - -

16 At times, Michael tell me there's a car.

17 Q. Listen to me. Listen to the question. I
18 didn't ask what someone told you, if someone thought,
19 if someone said it.

20 Were you present, physically present when
21 you could see with your own eyes anybody bring any
22 cars to him?

23 A. No.

24 Q. No. And you never saw Mike or him, Mr.
25 Mallet, exchange any money at any time; did you?

- 1 A. No. I step away from.
- 2 Q. Answer is?
- 3 A. No.
- 4 Q. And now, I think you said, if I'm wrong
5 please correct me, that the day before the shooting
6 was the day you had seen Mike and Antonio at Alpine;
7 correct?
- 8 A. Yes.
- 9 Q. Right?
- 10 A. Uh-huh.
- 11 Q. That would be September 23rd; is that
12 correct?
- 13 A. No. The shooting took place--
- 14 Q. On the 24th?
- 15 A. Can -- yeah. Early in morning.
- 16 Q. Yes?
- 17 A. Yes.
- 18 Q. If I'm wrong, shooting took place you say
19 on the 24th. You saw, you say, Mike and him earlier
20 that day or day before at Alpine?
- 21 A. No. Earlier. The day before it would be.
- 22 Q. That would be the 23rd?
- 23 A. Yeah.
- 24 Q. Okay. Now, do you remember testifying in
25 the grand jury in this case?

1 A. Yes, I did.

2 Q. When you testified in the grand jury that
3 was September 27th, '96; correct?

4 A. I'm not sure.

5 MR. SCHNEIDER: Your Honor, if we could
6 have, have a stipulation that date is correct.
7 Mr. Piacentile.

8 MR. PIACENTILE: Judge September 27,
9 1996, is the date.

10 MR. SCHNEIDER: Thank you.

11 Q. So, the 27th was three days after the
12 shooting, the 24th; correct?

13 A. Yes.

14 Q. And it was four days after you had seen,
15 you say, Mike and Antonio Mallet at Alpine; is that
16 correct?

17 A. Yes.

18 Q. You know the difference between four days
19 and one week; don't you?

20 A. Yes.

21 Q. You know the difference between four days
22 and two weeks; don't you?

23 A. Yes.

24 Q. When you say two weeks, you mean fourteen
25 days; correct?

1 A. Yes.

2 Q. When you testified in the grand jury were
3 you under oath?

4 A. Yes.

5 Q. And was there a D.A. there, not Mr.
6 Piacentile, but a woman named Miss Nelson?

7 A. I don't remember her name. It was a
8 female.

9 Q. And it was a different D.A. than Mr.
10 Piacentile?

11 A. Yes, it was.

12 Q. She was asking you questions; correct?

13 A. Uh-huh. Yes.

14 Q. Before she asked you questions you had
15 spoke to her in preparation for your testimony in the
16 grand jury; correct?

17 A. Yes. She said get up there and tell it
18 how it is, what happened.

19 Q. You told her and the grand jurors
20 everything you could as best you could remember in
21 response to her questions; correct?

22 A. Yes.

23 Q. If you didn't know something you would say
24 to her I don't know or I don't remember; is that
25 correct?

1 A. Yes.

2 Q. You wouldn't just make some answer up;
3 would you?

4 A. No.

5 Q. Do you remember testifying in the grand
6 jury and were you asked the following questions and
7 did you give the following responses in the grand jury
8 on September 27, 1996, at page 3 line 21:

9 "QUESTION: When you and Mike went to
10 Alpine Motors did you speak to Cilo?

11 "ANSWER: No, I didn't.

12 "QUESTION: How long ago was that?

13 "ANSWER: Two weeks ago."

14 Did you give those answers to those
15 questions in the grand jury to an ADA and grand
16 jurors?

17 Did you give that answer?

18 A. Yes, I did.

19 Q. And there was no defense lawyer there, was
20 there, as far as you knew?

21 A. No.

22 Q. There was nobody questioning the way I am;
23 correct?

24 A. No, no.

25 Q. Just you and the D.A. and the grand

1 jurors; right?

2 A. Yes.

3 Q. Now, I think you said a few moments ago
4 you had no reason to ever think something was going to
5 go wrong when you made any of your delivery, car
6 deliveries with Mike; correct?

7 A. Yes.

8 Q. And you say that at the times that you
9 were in Alpine you came many times with Mike; right?

10 A. Yes.

11 Q. And at times you would leave with Mike;
12 correct?

13 A. Yes.

14 Q. And is it fair to say many times you say
15 that you were with Mike when Mike was talking to Mr.
16 Mallet and when they would begin you would step off
17 and go away; right?

18 A. Yes.

19 Q. People at Alpine knew, according to you,
20 that you and Mike were friends; right?

21 A. Yes.

22 Q. That wasn't strange; right?

23 A. No.

24 Q. They knew you were working together
25 stealing these cars; right?

1 A. No. They didn't know.

2 Q. Some of the people there asking that the
3 cars would be delivered who are looking for stolen
4 cars, they knew you worked with Mike; didn't they?

5 A. No.

6 Q. You were like a silent partner?

7 A. Exactly.

8 Q. Now, when you had seen Mike and Antonio
9 Mallet, Cilo, talking that day you didn't see them
10 have any fight; did you?

11 A. No.

12 Q. You didn't see them have what appeared to
13 be, you know, emotions, arguing, yelling at each
14 other, anything like that when you saw them right
15 before the shooting, day before; did you?

16 A. No, I just walk away.

17 Q. No.

18 A. No.

19 Q. When you went on the 24th accompanying
20 Mike, you said Mike would be giving the car to
21 somebody else; correct?

22 A. No.

23 Q. He was going to deliver a stolen car to
24 somebody. When I say somebody else, you say to Cilo?

25 A. Yes.

1 Q. He was going to go behind Waldbaum's to
2 deliver this stolen Lexus to somebody; is that
3 correct?

4 A. Yes.

5 Q. And you knew that your job was to back him
6 up. Be there behind him; correct?

7 A. Uh-huh.

8 Q. And also to drive him home after he
9 delivered the stolen property; right?

10 A. Uh-huh.

11 Q. Right?

12 A. Yes.

13 Q. When you came behind Waldbaum's you
14 noticed the Lexus parked down the other side, other
15 end of the building by one of the loading platforms,
16 the steps; right?

17 A. Yes. The middle part, yes.

18 Q. Yes?

19 A. Yes.

20 Q. And further away you saw a white car;
21 correct?

22 A. Yes.

23 Q. And at that time, the time that you first
24 saw the Lexus and first saw the white car, there was
25 nothing going on that appeared to scare you or shock

1 you; right?

2 A. No. Not at that time.

3 Q. You were looking at the scene to see what
4 was going on, what will happen so you could get ready
5 to take Mike back to wherever you were going to go at
6 2:30 in the morning; right?

7 A. Yes.

8 Q. So at the time that you saw this white car
9 tell us what it looks like other than being a white
10 car?

11 A. A small car. I can -- like one of them
12 Summits or Metro.

13 Q. Sorry?

14 A. Very small car. Like Metro or Summit or
15 something that is very small.

16 Q. You know cars pretty well?

17 A. From that distance I couldn't be able to
18 tell.

19 Q. You couldn't tell?

20 A. No.

21 Q. From the distance of where you were, the
22 car, is it fair to say this white car was not only far
23 away, but it was kind of dark. Only the fact that you
24 could see the white; right?

25 A. No. There is light. Light on the

1 Waldbaum's. I could make out the car. Not make of
2 the car.

3 Q. The light was good enough to see the kind
4 of car. You could not tell us now is it two-door,
5 four-door; could you tell us?

6 A. No.

7 Q. No?

8 A. No.

9 Q. Was it?

10 A. I think it might be a -- like we have them
11 Dodge Colts. One of those small cars.

12 Q. You are guessing?

13 A. I'm not trying to say it is a two-door,
14 four-door.

15 Q. Do you know?

16 A. I was observing. It was a white car.

17 Q. You don't know?

18 A. No.

19 Q. Right.

20 And at some point you say you saw Cilo
21 come out and greet Mike in what appeared to a friendly
22 gesture?

23 A. Yes.

24 Q. Shook hands, whatever, right there.

25 Didn't seem to be any problem at this time between

1 them at the time from what you could see from far
2 away?

3 A. I know --

4 Q. Listen to me.

5 MR. PIACENTILE: Objection.

6 Q. What appeared, what you saw.

7 MR. PIACENTILE: Judge.

8 THE COURT: Overruled. Proceed.

9 Q. What you saw, did you see them physically
10 fighting?

11 A. No.

12 Q. Did you see them what, yelling or what
13 appeared to be yelling at each other?

14 A. No.

15 Q. Could you see them punching each other?

16 A. No.

17 Q. Saw them shake. Go about what you say is
18 their business. Mike getting in the car. Cilo came
19 around from the passenger to the driver, et cetera;
20 correct?

21 A. Yes.

22 Q. Now, you were staying away with your
23 lights off at the time when you saw the Lexus and the
24 white car at the end of the building; correct?

25 A. Uh-huh.

1 Q. At that time you stayed near this dumpster
2 where you made a notation on the photograph; is that
3 correct?

4 A. Uh-huh.

5 Q. And you stayed there back in with your
6 lights off so you could not be seen; correct?

7 A. Not by them, but by people that is working
8 there. So they wouldn't, they wouldn't see what is
9 going on.

10 Q. If you were not, you are saying you didn't
11 care if Mike or Cilo or anybody else saw you, you
12 didn't care?

13 A. Back there, no. I am there for a reason
14 to get him and bring him home.

15 Q. Right.

16 A. More worried about people seeing lights
17 going around the building wondering what is going on
18 back there.

19 Q. You were not concerned about Cilo himself
20 seeing you; were you?

21 A. No.

22 Q. You weren't there to protect Mike against
23 Cilo; were you?

24 A. No. I was there to get him. Take him
25 home.

1 Q. And is it fair to say the distance from
2 the dumpster to the black Lexus, you use the words,
3 you said 140 feet. Did you measure it?

4 A. Yes.

5 Q. You did?

6 A. The detectives and I went back there and
7 actually got that wheel and did the measuring.

8 Q. When was that?

9 A. Sometime last week I think, Friday.

10 Q. Friday of - - right, today is?

11 A. Monday.

12 Q. Monday?

13 A. Friday past.

14 Q. Friday you and the detectives went back to
15 the scene; correct?

16 A. Yes.

17 Q. And did either you or the detectives take
18 any pictures of this scene without using a flash
19 camera back on Friday when you went three days ago?

20 A. No. They never used a camera. Used that
21 wheel that measures.

22 Q. Separate question. The wheel is to
23 measure distance; right?

24 A. Yes.

25 Q. Separate and apart from the distance did

1 anybody take a picture without using a flash of what
2 it looked like back there?

3 A. Well, he showed me the pictures previously
4 and there was a mark on the wall that was still on the
5 wall that he used as his judgment right there for
6 where it was.

7 Q. Maybe my question is not clear, maybe.
8 Did anybody on Friday go with a camera?

9 A. No.

10 Q. And take a picture of any of the location
11 back there?

12 A. Not on Friday.

13 Q. You say not on Friday. Were there any
14 other pictures taken in your presence over at that
15 location?

16 A. No.

17 Q. All you know you were shown pictures
18 either by the detective or by a D.A. that had been
19 taken previously; correct?

20 A. Yes.

21 Q. And you looked at these, some of these
22 photographs in court, People's two, People's seven;
23 correct?

24 A. Yes.

25 Q. Is it fair to say the way these pictures

1 appeared to you and seven and the others, they're much
2 more brighter in the photograph than really is
3 depicted back in September of '96; right?

4 A. Yes.

5 Q. It is much brighter in the photographs
6 because it appears that had a - - some kind of fake or
7 artificial illumination is used to help the
8 photographs; correct however they --

9 MR. PIACENTILE: Objection to that.

10 THE COURT: Sustain the objection.

11 Calls for a degree of expertise that he
12 does not have.

13 MR. SCHNEIDER: Sorry.

14 THE COURT: Calls for a degree of
15 expertise that he doesn't have.

16 Q. When you were coming around the bend to go
17 to the back, you didn't know where Mike was going to
18 park the Lexus; did you?

19 A. No.

20 Q. You had not had any prearranged signal or
21 deal that he will park by a certain location. You
22 will meet him by the dumpster. Anything like that?

23 A. I never be around there before.

24 Q. When you came around.

25 A. Uh-huh.

1 Q. Saw the car parked one hundred forty feet
2 away from you; correct?

3 A. (Witness nodding head.)

4 Q. And you never took your car and continued
5 to drive up to where Mike's car was; did you? Yes or
6 no?

7 A. No.

8 Q. And you never had any reason to think
9 there was anything going wrong, for you to get closer
10 for you to look at these guys to see what was
11 happening; did you?

12 A. No. Well, the way he used to do it --

13 Q. I didn't ask you what he used to do, sir.
14 I asked what you did that day, that night,
15 that morning, 2:30 in the morning. All right.

16 You didn't think there was anything to get
17 closer; did you at that time?

18 A. No. I normally stay back.

19 Q. Is it fair to say, sir, that back there,
20 the whole location from the dumpster to where the car
21 was parked, that it is dark back there; isn't that
22 right.

23 A. Yes. Where I was much more darker than
24 where the car was positioned.

25 Q. The only lights either by the dumpster or

1 by where the Lexus was were the lights off the
2 building that we see in People's seven; correct?

3 MR. SCHNEIDER: If I may approach the
4 witness, your Honor.

5 THE COURT: The officer will show him.

6 MR. SCHNEIDER: Yes.

7 COURT OFFICER: (Handing exhibit to the
8 witness.)

9 Q. Do you see People's seven, that
10 photograph?

11 A. Yes.

12 Q. The only lights that illuminate that whole
13 area from the between the Lexus and the dumpster are
14 the lights on buildings that are reflected in that
15 photograph; correct?

16 A. Yes.

17 Q. Now, you say that you saw a second person
18 get out of this small white car; correct?

19 A. No. Second person came from the corner of
20 the building.

21 Q. I apologize. When you saw the second
22 person come from the corner, can you tell us what he
23 looked like?

24 A. Slim individual.

25 Q. Sorry?

1 A. Like he was slim. He wasn't built or
2 anything.

3 Q. Yes?

4 A. I wasn't really taking notice of him. It
5 was first time I had ever seen him. I can't really
6 say I know him or anything.

7 Q. At the time that you first saw him you
8 said you were watching everybody that was doing --
9 what they were doing, Cilo, Mike and the second guy;
10 is that right?

11 A. Uh-huh.

12 Q. And at the time there was nothing going on
13 that seemed out of the ordinary when you first saw all
14 of them; correct?

15 A. No, nothing.

16 Q. Right?

17 A. Nothing.

18 Q. My question is, as you are watching this
19 guy from the same distance as you are watching Mike
20 and as you were watching Cilo under the same lighting
21 conditions, tells now what he looked like?

22 A. He was slim, dark.

23 Q. Did he have a beard, mustache?

24 A. I couldn't tell from that distance if he
25 had a beard.

1 Q. You couldn't see his face from that
2 distance?

3 A. Yeah, I could see his face. I can't tell
4 if he had a beard. Might have had a beard or not have
5 a beard.

6 Q. Not what he might not have. What did you
7 see. Did you see how tall he was?

8 A. Say five-nine. About my height or so.

9 Q. What was he wearing?

10 A. He had a black jacket on. Like a bear
11 jacket and black pants.

12 Q. Is it fair to say when you spoke to the
13 detectives from the minute you first saw them to the
14 minute you went home about nineteen or so hours later
15 you never once gave them a description of the second
16 person; did you?

17 MR. PIACENTILE: Objection.

18 A. They never asked.

19 MR. PIACENTILE: Withdraw my objection.

20 Q. Did you ever give a description of the
21 second person?

22 A. They never asked.

23 Q. Didn't they ask you, tell me what you saw,
24 Mr. Walker. Didn't you make written statements and
25 say thin, one, two, three of them?

1 A. That I saw another person, but not to give
2 description of the person. Just description of the
3 shooter.

4 Q. They asked you to give a description of
5 the shooter?

6 A. Yes, they did.

7 Q. Did you ever give a physical description
8 of the shooter to any of the detectives?

9 A. I already know what he looks like already.

10 Q. My question is, you said Cilo; right?

11 A. Yes.

12 Q. Before you ever used of the name Cilo did
13 you ever give a physical description of the person you
14 say was the shooter?

15 A. Meaning. Could you - - I don't understand
16 the question.

17 Q. I saw the guy who did the shooting. He
18 was five-ten, five-eleven, six feet, brown jacket.
19 Anything about his physical description.

20 Isn't it a fact you never said a word to
21 any detective about the physical description of either
22 the shooter or the second person, never?

23 A. No because I knew who he was. I wouldn't
24 have to.

25 Q. Listen to my question, sir.

1 THE COURT: He is answering.

2 Q. Did you ever --

3 THE COURT: Counsel, he answered the
4 question.

5 MR. SCHNEIDER: He said he knew who he
6 was?

7 THE COURT: I know what he said. Move
8 on to the next question.

9 MR. SCHNEIDER: Certainly.

10 Q. Other than the person who you say you
11 knew, did you ever give a physical description of the
12 second person?

13 A. No.

14 Q. It is fair to say you didn't tell the
15 detectives that you knew the guy for a long time; did
16 you?

17 A. Did who?

18 Q. That question was poorly worded.
19 Apologize.

20 Spoke to the detectives a lot of times for
21 a long period of time; right?

22 A. Yes.

23 Q. When you first spoke to them and for hours
24 and hours later you didn't say to them I know who did
25 it in the beginning; did you?

1 A. No, no.

2 Q. Did you ever in any of the preliminary
3 descriptions or preliminary interviews give a
4 description of the shooter at any time?

5 A. No.

6 Q. Now, this Lexus that was stolen it has
7 head rests in the front seats; right?

8 A. Yes, it does.

9 Q. Those head rests are a little bit above
10 for your head to go back; right?

11 A. Uh-huh.

12 Q. Is that right?

13 A. Yeah.

14 Q. At some point you say you saw Mike inside
15 the car from where you were one hundred forty feet
16 away; right?

17 A. Uh-huh. I could see it through the dome
18 light being on. I could see most of the movements in
19 the car like shuffling.

20 Q. You say dome light was on. There's still
21 the car and back of the seats and the head rest
22 between where you were?

23 A. Yes.

24 Q. And the passenger in and the driver;
25 correct?

- 1 A. Yes.
- 2 Q. You say you were able to see Mike; is that
3 correct?
- 4 A. Not see him totally.
- 5 Q. You saw a body in the front?
- 6 A. Yeah. Doing whatever he was doing.
- 7 Q. Did you see him bend over in the front
8 from where you were?
- 9 A. Yes. I seen him with his foot out. He
10 went in like this.
- 11 Q. Were you ever able to see his head from
12 where you were in the back? Could you see Mike's
13 head?
- 14 A. No. All I could see like the movements of
15 the head.
- 16 Q. And you say you saw the shooter lean into
17 the car; right?
- 18 A. Yes. Looking in towards what he was
19 doing.
- 20 Q. And back out of the car; right?
- 21 A. Yes.
- 22 Q. And you can't describe the gun; is that
23 right?
- 24 A. No.
- 25 Q. There was no reflection from any of the

1 lights to see if it was either silver or black, flat,
2 round thing at all?

3 A. No, no.

4 Q. Did you ever see anybody put the gun to
5 Mike's head?

6 A. Well, I- -

7 Q. Before it was shot; yes or no.

8 A. Could you repeat that again.

9 Q. Sure. Did you ever see before Mike was
10 shot--

11 A. Yes--

12 Q. --right before the you heard the pop, did
13 you ever see the shooter put the gun to Mike's head?

14 A. I've seen the reaction what he did, but
15 not seen the gun like seeing it with my eye.

16 Q. Did you ever see the person put the gun to
17 Mike's head?

18 A. I seen the movement that he did and went
19 toward his head not knowing if it is a gun or not.

20 MR. PIACENTILE: Can we clarify who he
21 is referring to buy he in that answer.

22 THE COURT: The shooter.

23 Q. The shooter you say is Cilo?

24 A. Yes.

25 Q. So there's no confusion; right?

1 A. Yes.

2 Q. I don't mean to be difficult. Were you
3 able to see the gun at Mike's head?

4 A. No, I wasn't.

5 Q. Do you remember testifying in the grand
6 jury page six. It is a long answer. I will read the
7 answer so there's no mistake. Page six.

8 Were you asked this question and give this
9 response:

10 "QUESTION: From there what happened?

11 "ANSWER: The other individual walked
12 over to the passenger side of the Lexus where
13 Cilo was at. Cilo then walk back over the
14 driver's side. Mike was bent over inside the
15 car. While Mike's head was bend toward the
16 ignition I then saw Cilo slowly back out of the
17 car. Took his hands out of his pocket, put a gun
18 to Mike's head and shot him once. They both ran.
19 Got into the white car and sped off."

20 Did you give that answer in the grand
21 jury under oath?

22 A. Yes. Yes.

23 Q. Now, you heard one pop; is that right?

24 A. Yes.

25 Q. And that you are assuming that one pop was

1 one shot?

2 A. Yes.

3 Q. Never her one or two shots; did you?

4 A. Just one.

5 Q. Just one?

6 A. Yes.

7 Q. After the shot was fired by the shooter,
8 did you ever see him like come out and look around to
9 see if anybody saw what happened?

10 A. Mike or.

11 Q. After the shooter?

12 A. Okay.

13 Q. After you heard the pop?

14 A. Okay.

15 Q. You then say you saw Cilo and the other
16 guy run directly to the white car?

17 A. Exactly.

18 Q. Did you ever see them stop, look around to
19 see if anybody had seen what happened?

20 A. No.

21 Q. At any time did you ever see before,
22 before you heard the pop?

23 A. Yes.

24 Q. Did you ever see or hear the gun pointed
25 at Mike in an attempt to get him out of the car?

1 A. No.

2 Q. Did you ever see either Cilo who you say
3 is the shooter or the other guy try to take Mike out
4 of the car before he shot?

5 A. No.

6 Q. Did you ever see either of the guys,
7 either the shooter or the other guy both go through
8 Mike's pockets or anything like that to take what he
9 had?

10 A. No.

11 Q. Or steal anything from him?

12 A. No.

13 Q. In fact, Mike had a gold chain; didn't he?

14 A. Yes.

15 Q. Did anybody take that gold chain from
16 Mike?

17 A. No.

18 Q. Now, the car that was there, this black
19 Lexus, that car you say was supposed to be given by
20 Mike to Cilo; correct?

21 A. Yes.

22 Q. Did you ever see Cilo after Mike was shot
23 take Mike out and get him out of the car and try to
24 drive the car away?

25 A. No.

1 Q. So the car that was supposedly the basis
2 of this meeting stayed there; right?

3 A. Yes.

4 Q. And the guy who was supposed to get the
5 car from Mike never tried to take the car?

6 A. No. He didn't do anything.

7 Q. Now, when you are first --

8 When you went to call 911 I think you said
9 on direct examination, quote, that's when everything
10 started. The cops came; is that right?

11 A. Uh-huh.

12 Q. Right?

13 A. Yes.

14 Q. Isn't it kind of, that is like when
15 everything end. Didn't the shot happen before the
16 cops came?

17 A. I talk about everything start as far as
18 the cops is concerned.

19 Q. That is when you got involved when the
20 cops came; right?

21 A. Yes.

22 Q. When you were on the phone with 911 the
23 cops came a lot quicker than you expected. You were
24 surprised?

25 A. I was surprised. I am trying to get help

1 there to help him.

2 Q. Speaking of 911 when you were on the phone
3 with the 911 operator you did not give your name; did
4 you?

5 A. They never asked.

6 Q. Sure they did?

7 A. If they did I was scared. I wasn't, I was
8 trying to get him help and not to be in the picture.

9 Q. Listen to the question. Did you give your
10 name to the operator when you first call 911?

11 A. I don't recall. I don't remember.

12 Q. And isn't it fair to say that when you
13 were on the phone with 911 you didn't say I just saw
14 my friend get shot; did you?

15 A. No. I didn't.

16 Q. And you didn't say to them the guys who
17 did it just drove off in a white car?

18 A. No.

19 Q. You didn't say anything to the 911
20 operator which would help get the guys who shot your
21 friend; get them caught?

22 A. They weren't asking me questions about
23 that. They were asking where he was and what
24 happened.

25 Q. You said you didn't know. You said as far

1 as you know I just got there. This is what you told
2 the 911 operator. I went in the back. I found my
3 friend shot; right?

4 A. Yep.

5 Q. That is all you said; right?

6 A. Uh-huh.

7 Q. That is the first call. That was the
8 first contacted you had with the police, 2:38 in the
9 morning; right?

10 A. Uh-huh.

11 Q. Sometime later, three o'clock in the
12 morning you spoke to a Detective Vigo, V-i-g-o;
13 correct?

14 A. Yes.

15 Q. The detective you had been with all day
16 today?

17 A. Yes.

18 Q. You saw him like spending time with you
19 today?

20 A. Yes.

21 MR. PIACENTILE: Objection, spending
22 time with him.

23 MR. SCHNEIDER: Sorry.

24 Q. That is the detective you were with today.
25 Is it fair to say when Detective Vigo

1 questioned you he was asking you as a witness, tell me
2 what you saw, what you know; correct?

3 A. Yes.

4 Q. When you spoke to Detective Vigo, you told
5 him that you didn't know the victim's address; isn't
6 that correct?

7 A. I don't know it. I just know how I got to
8 his house. Don't know the address itself.

9 Q. Did you tell Detective Vigo that you were
10 with the victim earlier in the day and that the victim
11 told you to meet him at Waldbaum's at 10:30 p.m?

12 A. Yes, I did.

13 Q. Did you tell that to Detective Vigo?

14 A. Yes.

15 Q. There was a lie?

16 A. Yes, I did.

17 Q. Sorry?

18 A. Yes, I did lie.

19 Q. Did you also tell Detective Vigo when you
20 showed up at the parking lot at 10:30 p.m the victim
21 wasn't there. You told him that; right?

22 A. Yes.

23 Q. That was a lie; wasn't it?

24 A. Yeah.

25 Q. You then said to him, well, Detective

1 Vigo, I left the area and came back two hours later
2 12:30. You told that to Detective Vigo; right?

3 A. Yes.

4 Q. That was another lie; right?

5 A. Yep.

6 Q. Sometime after that you said that you
7 called the victim at his home, but you didn't receive
8 an answer. You came back to the parking lot. That
9 was a lie also; right?

10 A. Uh-huh.

11 Q. You said --

12 A. Yes.

13 Q. You said you were worried and that you
14 went back again at 2:30; right. That was a lie. You
15 didn't go back. You were there only one time?

16 A. Yes.

17 Q. Right?

18 A. Yes.

19 Q. And you just drove around the back and you
20 just happened to see the male, your friend, sitting in
21 the car; correct?

22 A. Yes.

23 Q. That was a lie; wasn't it?

24 A. Yep.

25 Q. Your friend you saw bleeding, shot,

1 shaking, flickering with the pliers in his hand. You
2 tell the detectives you didn't see squat; is that
3 right?

4 A. Yes.

5 Q. That was three o'clock in the morning.
6 That was the first official statement that you made to
7 the detective; right?

8 A. Yes.

9 Q. You still stay in the precinct, right.
10 Done go home after that statement; did you?

11 A. No.

12 Q. You stayed in the precinct until a couple
13 of hours later when you spoke to more detectives; is
14 the right?

15 A. Yes.

16 Q. And at 5:35 in the morning two and a half
17 hours after this first statement which you say is a
18 lie, you spoke to a different detective, Detective
19 Corderro; correct?

20 A. I don't remember him. I guess so.

21 Q. Some detective; right?

22 A. Yes.

23 Q. You told that detective a story about what
24 happened that day, the day before; right?

25 A. Uh-huh.

1 Q. Lie after lie after lie; correct?

2 A. Yes.

3 Q. And this is the detective who is trying to
4 help you find the person who, person who killed your
5 friend; right?

6 A. Yep.

7 Q. And the detective who was driving to --
8 By the way, when you were back, hidden by
9 dumpster.

10 A. Uh-huh.

11 Q. You had no reason in the world to think,
12 think Cilo saw you; did you?

13 A. No, he didn't.

14 Q. He didn't see you; right?

15 A. No. It was impossible for him to see me
16 right there. I guess there is cars parked there on
17 the sides. I guess he figuring out the car was
18 already there already.

19 Q. As far as you knew Cilo did not see you
20 there; right?

21 A. No.

22 Q. You thought as far as you knew he got away
23 scot free; right?

24 A. Had I got away.

25 Q. Get away in terms of being seen by the

1 shooter?

2 A. Exactly.

3 Q. Your identity as a potential witness was
4 safe with you; right?

5 A. Uh-huh.

6 Q. So you had nothing to be scared of?

7 A. Sure did. I was.

8 Q. Excuse me. You didn't get scared. You
9 had nothing to be afraid of at the time because the
10 shooter hadn't seen you yet; had he?

11 A. No, he didn't.

12 Q. At 5:30 in the morning after you gave the
13 first three o'clock statement, you are talking to a
14 detective and again you make up a detailed scenario of
15 what you and Mike did that whole day; right?

16 A. Yes.

17 Q. You just make it up; right?

18 A. Uh-huh.

19 Q. Whatever came to your head, whatever you
20 thought you could get by this detective came out of
21 your mouth. You told him signed it. He wrote it down
22 right.

23 A. Yes.

24 Q. None of it was true; right?

25 A. No. Well, some of it I should say.

1 Q. Some?

2 A. Yes.

3 Q. The stuff that had nothing to do with the
4 murder. That was true; right?

5 A. Could you repeat that please.

6 Q. Sure.

7 Anything you said that had nothing to do
8 with the murder that was true about that you took your
9 son to Jacobi; right?

10 A. Yes.

11 Q. That was true; right?

12 A. Yes.

13 Q. And anything about you being involved in
14 stolen cars, you didn't say anything about that; did
15 you?

16 A. No.

17 Q. You didn't say anything about you and Mike
18 knowing each other because you had planned to bring a
19 car to Cilo. You didn't say that; did you?

20 A. No.

21 Q. You didn't say that you saw two guys shoot
22 your friend; did you?

23 A. No.

24 Q. And you didn't say you saw Cilo shoot your
25 friend; did you?

1 A. No.

2 Q. You didn't even say you saw Cilo --

3 Withdrawn.

4 You did not tell the detective that Cilo
5 had anything whatsoever to do with the stolen car; did
6 you?

7 A. No.

8 Q. In fact, you did not even tell them the
9 car was stolen; did you?

10 A. No.

11 Q. They found out themselves; right?

12 A. Yes.

13 Q. They ran the plate. Came back. Said Mr.
14 Walker what is up with this. The car it is stolen;
15 right?

16 A. Uh-huh.

17 Q. That is when you got nervous; is that
18 right?

19 A. I told them I knew nothing about it.

20 Q. That was a lie?

21 A. It was.

22 Q. You said something on direct about
23 borrowing money for a cab, right, when Mike came up to
24 your house?

25 A. Yes.

1 Q. That is true; that happened?

2 A. Yes.

3 Q. You say when Mike came to your house to
4 get you to drive for him to go get a stolen car, he
5 did not have eight dollars to pay the cab?

6 A. Right.

7 MR. PIACENTILE: Objection to what Mike
8 had or didn't have.

9 THE COURT: Sustained.

10 Q. When Mike came to your house he asked you
11 to pay the cab fare; right?

12 A. Uh-huh.

13 Q. Right?

14 A. Yes.

15 Q. When Mike asked you to pay the cab fare
16 you did not have the eight dollars either; did you?

17 A. No.

18 Q. You had to go down to some Puerto Rican
19 guy; right?

20 A. Yes.

21 Q. And barrow eight dollars from him?

22 A. Yes.

23 Q. That you told the detective?

24 A. That was true.

25 Q. That was true?

1 A. Yes.

2 Q. Only thing in the statement that was true?

3 A. I have to hear the rest.

4 Q. We will ask.

5 A. Yes.

6 Q. When you spoke to the detectives, either
7 5:30 in the morning or some time shortly thereafter,
8 isn't it fair to say that you said that Mike told you
9 that he had had a car for sale. You told that to the
10 detectives; right?

11 A. Yes.

12 Q. That was a lie; right?

13 A. No. That wasn't.

14 Q. That was true.

15 A. Uh-huh.

16 Q. Well, then the very next sentence what you
17 told the detectives didn't you tell them that you told
18 Mike, "I", meaning you, "might know somebody that
19 would be interested in buying the car."

20 That happen; right?

21 A. Yes. That was true.

22 Q. That was true?

23 A. Uh-huh.

24 Q. When you and Mike had this discussion
25 about you thinking somebody would be interested in

1 buying the car I thought the car was set for Cilo?

2 A. No. Mike had other cars for sale also.

3 Q. He had stolen more than one car. It is a
4 situation where --

5 A. He was not only stealing cars. He was
6 buying and selling cars way I was too.

7 Q. When you told the detectives you had
8 somebody that would be interested in buying the car
9 you had somebody else, not Cilo who would be
10 interested in buying a stolen car?

11 A. No. Had a stolen car. A car that will be
12 registered and good. A car you bought from the
13 auction. Not a stolen car, period.

14 Q. This was a '92 twin turbo Z?

15 A. Yes.

16 Q. That was true, the statement to the
17 detective about that. That was true; is that
18 correct?

19 A. Uh-huh.

20 Q. You made up some detail about watching a
21 VCR. Is that true or a lie?

22 A. When I went to get him, the night I went
23 to ring the bell, he buzz me. While he was getting
24 dressed, I was watching one of them police chases.

25 Q. That was true. You came for the stuff,

1 good stuff. How he would like you to pick him up at
2 Waldbaum's 10:30 p.m, 5:30 in the morning. And when
3 you told that to the detective that was a lie; wasn't
4 it?

5 A. Yes.

6 MR. PIACENTILE: 5:30.

7 Q. You told the detective you went over to
8 finish cleaning your car. That was a lie; wasn't it?

9 A. Uh-huh.

10 Q. You say 10:45 or eleven o'clock you went
11 there. You went there by Waldbaum's. You waited for
12 a half hour. That was a lie; right?

13 A. Uh-huh.

14 Q. You then went back to your block. See if
15 he was already there. He was there. That was another
16 lie; right?

17 A. Uh-huh.

18 THE COURT: You have to answer. Don't
19 say uh-huh. Say yes.

20 THE WITNESS: Yes.

21 Q. About twelve o'clock to 12:15 you went
22 inside to have dinner or food in your house while you
23 were still waiting for Mike; right. Tell that to the
24 detective. That was a lie?

25 A. Yes.

1 Q. That was lie?

2 A. Yes.

3 Q. You say you went in your car. Waited in
4 your car to 1:30 in the morning for Mike, right. That
5 was a lie?

6 A. Yes.

7 Q. You were telling these lies to the
8 detectives because you wanted to do everything in your
9 power not to get yourself involved; right?

10 A. Yes.

11 Q. Because you didn't want to place yourself
12 at the scene of a homicide with a stolen car and you
13 being involved in stolen cars; right?

14 A. Yes.

15 Q. So you were telling the detectives
16 anything that you could think of to deflect them from
17 you to anybody or anywhere else; right?

18 A. Yes.

19 Q. And you were hoping to get away with this;
20 right?

21 A. I was scared at the time.

22 Q. At the time that you first spoke to
23 detective, three o'clock in the morning or 5:30 in the
24 morning, when you spoke to them if they had said to
25 you, okay, Mr. Walker, thanks. This statement is

1 fine. You can go now. You would have been out there;
2 is that right?

3 MR. PIACENTILE: Objection to what
4 might have happened.

5 THE COURT: No. Overruled.

6 That is what you were trying to do;
7 isn't it?

8 THE WITNESS: Yes, but it has been on
9 my mind since. Not like I haven't had nightmares
10 over this. Maybe sooner or later I would have
11 came up coughed up the truth.

12 Q. Maybe we will never know; would we?

13 A. You are saying that is what I was trying
14 to do.

15 Q. Back then when you were in the middle of
16 lying to the detective three, five and eight and ten,
17 at any time, if the detective said to you Mr. Walker,
18 this first statement is good enough. Thank you very
19 much. We'll be in touch. Would you have then just
20 walked out of the precinct?

21 A. Possibly I would have.

22 Q. Or would you say, sit there say do you
23 know what, detective?

24 THE COURT: Did you hear the answer,
25 possibly I would have.

1 MR. SCHNEIDER: I heard it. I was
2 going to another alternative.

3 THE COURT: No other alternative. Next
4 question.

5 Q. Now, there was one important thing at one
6 of these statements whether it is the 5:30 statement
7 or sometime after I would like - -

8 MR. SCHNEIDER: May I approach the
9 witness for a second.

10 THE COURT: Sure.

11 Q. If you would look at what appears to be
12 the third page of one of your earlier statements.

13 MR. PIACENTILE: Can we have that
14 marked as Defendant's B at least for the purpose
15 of identification.

16 THE COURT: I don't know what statement
17 it is.

18 Q. Have you had a chance to look at that
19 statement or that portion of your entire statement?

20 THE COURT: Have you looked at it?

21 THE WITNESS: Yes.

22 THE COURT: Question.

23 Q. Is that your signature at the bottom?

24 A. Yes, it is.

25 Q. There's detectives that have their

1 signature there?

2 A. Yes.

3 Q. Is it a fair statement that is the one
4 that was a lie; right?

5 A. Uh-huh.

6 Q. Right?

7 A. Yes.

8 Q. Is it fair to say in that page where you
9 signed your name and the other detectives sign their
10 names that is where you say I swear, I swear that this
11 is a truthful statement and that was made voluntarily;
12 isn't that right?

13 A. Yes.

14 Q. That is what you wrote, signed and sworn
15 to; correct?

16 A. Yes.

17 Q. That was a lie; right?

18 A. Yes.

19 Q. Right to the detectives' face you lied and
20 swore to it; right?

21 A. Yes.

22 MR. SCHNEIDER: May I have that back
23 please, officer.

24 COURT OFFICER: (Handing document to
25 Mr. Schneider.)

1 MR. SCHNEIDER: Thank you.

2 Q. Now, sometime after 5:30 in the morning
3 which is this sworn statement that you, not sworn
4 statement that you swore to, you still remained in the
5 precinct and continued to talk to different detectives
6 periodically; correct.

7 A. Yes.

8 Q. Now, is it fair to say at some point -
9 Withdrawn.

10 You said you began crying. Detective
11 Tracy got to the bottom of this; right?

12 A. Yes.

13 Q. Do you remember what time of day it was
14 that you were crying?

15 A. No.

16 Q. Was it day or night.

17 A. I wasn't sure. I was in a room locked
18 up.

19 Q. Sorry?

20 A. I was detained in a room. Not like there
21 is windows I could look. There was -- I'm not sure
22 what time it was.

23 Q. If I misheard you, correct me. Did you
24 say you were locked up, detained; did you say?

25 A. Locked in handcuffs. Just like in a room

1 where they were questioning of me.

2 Q. Were you free to walk out of that room if
3 you want?

4 A. Yes.

5 MR. PIACENTILE: Objection.

6 THE COURT: Overruled. He already
7 answered.

8 Q. Did you ever walk out of that room?

9 A. Use the bathroom, so forth.

10 Q. You never left the precinct?

11 A. No.

12 Q. Is it fair to say that when you were there
13 talking to the detectives for hours and hours at some
14 point two detectives, at least two detective,
15 Detective Nieves and Detective Gannon read what is
16 called the Miranda rights; isn't that right?

17 A. Yes.

18 Q. They told you that the stuff you see on
19 T.V, right to remain silent; right to the lawyer,
20 things like that; correct?

21 A. Yes.

22 Q. And they read you those rights because you
23 were now being questioned for hours and hours; is that
24 correct?

25 A. Yes.

1 Q. And they told you that they didn't believe
2 what you were saying to them; right?

3 A. Yes.

4 Q. They said they thought there was a good
5 portion of what you were saying was a lie; is that
6 correct?

7 A. Yes.

8 Q. And they read you your rights to protect
9 you from incriminating yourself; correct?

10 A. Yes.

11 Q. They have read you your rights because now
12 they told you and you believed that you were now a
13 suspect in a murder; correct?

14 A. No. They never said that to me.

15 Q. Did you think you were?

16 A. No.

17 Q. Did you think maybe you were going to be
18 somehow hooded up with this murder?

19 A. I thought I might be charged for the car.
20 He died. I am alive. I would be -- would get in
21 trouble for the car.

22 Q. They read you you're rights. You signed
23 those rights saying I will still talk to you even
24 after I have all these rights; correct?

25 A. Yes.

1 Q. That was done 8:30 p.m of the 24th;
2 correct?

3 A. I don't remember the time.

4 Q. After your rights were given at 8:30 p.m
5 you were told you are a suspect, what you say maybe
6 used against. You made another statement to the
7 detectives at 8:30 p.m; correct and you signed it;
8 right?

9 A. Yes.

10 Q. Right?

11 A. Yes.

12 Q. Sorry?

13 A. Yes.

14 Q. Yes. Is it fair to say that on that
15 statement, the one that you spoke to the detectives
16 about after your Miranda rights at 8:30 p.m, you
17 still did not say you saw the shooting; did you?

18 A. Still wasn't trying to get involved in it.

19 Q. You still didn't say that Cilo, Antonio
20 Mallet was there; did you?

21 A. No.

22 Q. Isn't it fair to say that you told the
23 detectives 8:30 p.m on Monday, Mike told me Cilo's
24 friend might be taking the car. Did you tell that to
25 the detectives?

1 A. Yes, I did.

2 Q. Was that true or was that a lie?

3 A. No. That is true.

4 Q. That is true?

5 A. Uh-huh.

6 Q. And again you signed, wrote the statement
7 out yourself. You signed it. Got your Miranda rights
8 and in that entire statement to the detectives you
9 didn't say word one about him being present or being
10 the shooter; did you?

11 A. No.

12 Q. Also at 8:30 in addition to making that
13 two-page statement about what happened, you also gave
14 other information about the cars that you and Mike
15 Ledeatte stolen; correct?

16 A. Uh-huh.

17 Q. Right?

18 A. Yes.

19 Q. And the situation where you backed him up
20 on different occasions for different cars; is that
21 correct?

22 A. Yes.

23 Q. August of '96, September, June, June,
24 April and different cars that were involved; is that
25 correct?

1 A. Yes.

2 Q. Not one of those cars was for Cilo; was
3 it?

4 A. Not all of them. I know who the customers
5 where.

6 Q. Not all of them. I would know who the
7 customers were.

8 At any time you were, you were involved in
9 backing up Mike you never went for any cars you told
10 the detective or any other cars, you never went to a
11 location and saw Cilo there to get, to receive the
12 merchandise; did you?

13 A. No.

14 Q. Sorry?

15 A. No.

16 Q. We come to the last statement 10:30
17 p.m., okay. That is the last one that you gave to the
18 detectives; right?

19 A. Uh-huh. Yes.

20 Q. Signed, right?

21 A. Yes.

22 Q. There was -- again, you were given your
23 Miranda rights; right?

24 A. Yes.

25 Q. You were told there you were potentially

1 incriminating yourself; correct?

2 A. Yes.

3 Q. And you made a statement to the
4 detectives, to Detective Nieves and Gannon and also
5 Detective Tracy as well; correct?

6 A. Yes.

7 Q. And that is the first time, 10:30 p.m.,
8 from three in the morning until 10:30 p.m, that is the
9 first time you every said you saw the shooting happen;
10 correct?

11 A. Yes.

12 Q. That is the first time you every say not
13 only did you see the shooting, this is the first time
14 you every mention Cilo as being the shooter; is that
15 correct?

16 A. Yes.

17 Q. Isn't it fair to say, sir, that you were
18 never, ever charged with stealing this Lexus, with
19 acting in concert with Mike Ledeatte for stealing this
20 Lexus; were you?

21 A. No, I wasn't.

22 Q. The police did not charge you; did they?

23 A. No.

24 Q. District Attorney's Office didn't charge
25 you; did they?

1 A. No.

2 Q. All the cars that you told them you stole,
3 you gave them specific names and years of the cars and
4 dates, you weren't charged by the police for any of
5 those stolen cars; were you?

6 A. No.

7 Q. You weren't charged by the D.A. for any of
8 those stolen cars; were you?

9 A. No.

10 Q. You said something on direct I believe
11 that you only heard one pop; right?

12 A. Yes.

13 Q. But that sometime during the night the
14 police said in your presence they believed that
15 Michael had been shot twice; correct?

16 A. Yes.

17 Q. Right?

18 A. Yes.

19 Q. And you heard them say that; right?

20 A. Yes.

21 Q. And when you gave the last statement on
22 September 24th, at 10:30 p.m. was that statement true
23 or was that also a lie, the last statement?

24 A. The very last statement.

25 Q. Yes.

1 A. That I gave was true.

2 Q. True?

3 A. Uh-huh.

4 Q. Is it fair to say the very last statement
5 that you gave which you say was true that you signed
6 with your own hand and that you even wrote out in your
7 owned hand in case, so there would be no -- be any
8 mistakes--

9 A. Uh-huh.

10 Q. You said he slowly pulled out of the car,
11 took a gun out and shot Mike twice.

12 A. It was once, but I was --

13 Q. Listen to what I said.

14 Did you tell- -

15 Withdrawn.

16 Did you write in your statement to the
17 detectives that you say was the truth, did you write
18 in the statement and sign it, "took a gun out and shot
19 Mike twice."

20 Did you say that, write it and sign it?

21 A. Yes.

22 THE WITNESS: Could I say something,
23 Judge.

24 MR. SCHNEIDER: When he asks you, you
25 can answer.

1 Thank you. I have nothing else.

2 THE COURT: Redirect.

3 MR. PIACENTILE: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. PIACENTILE:

6 Q. How many times did you --

7 Did you tell the detectives how many times
8 up hear the gun go off?

9 A. Yes, I did.

10 Q. And what did you tell them?

11 A. Once.

12 Q. So, how did it come to be that you wrote
13 down twice?

14 A. I wrote once. The detective said he was
15 shot twice because of the entry of the bullet went
16 that came out on the other side. They are saying it
17 was -- he was shot twice, but I only heard one. One
18 bang.

19 Q. Just so the record is clear, did you ever
20 see the gun that was used against Mike Ledeatte that
21 morning?

22 A. No.

23 Q. And are you receiving or are you supposed
24 to receive any cash for having testified here today?

25 A. No.

1 Q. What have you been promised in the way of
2 moving expenses? You mention moving expenses.

3 A. Well, for my safe being.

4 Q. Tell them?

5 A. For my safe being, for testifying the
6 D.A.'s office said for relocating expenses. They
7 relocate me so that I wouldn't have to fear being
8 around the neighborhood no more because of coming up
9 and telling all this.

10 Q. Counsel asked you some questions about an
11 incident back in 1994 with a Miss Howell, Debbie
12 Howell. Do you remember those questions?

13 A. Yes.

14 Q. How old were you back in July, 1994?

15 A. Twenty.

16 Q. How old was Miss Howell at that time; do
17 you know?

18 A. Maybe twenty-six or twenty-five. I'm not
19 sure.

20 Q. You've testified that you were present at
21 Alpine Motors with Mike Ledeatte and Cilo on a number
22 of occasions; is that correct?

23 A. Yes.

24 Q. On how many of those occasions did you
25 observe Mike Ledeatte and Cilo have a conversation?

1 A. Few of them.

2 Q. What is a few?

3 A. Say like between, ten, twelve times.

4 Q. Now, during these times, during any of
5 these times did you ever overhear, just yes or no, did
6 you ever overhear what the conversation was about; yes
7 or no?

8 A. Yes.

9 Q. Now, didn't you say you would remove
10 yourself from the conversation; is that the phrase you
11 used?

12 A. Yes.

13 Q. What do you mean? Tell this jury what you
14 mean when you say you removed yourself from those
15 conversations?

16 A. Well, Alpine has cars for sale, crashed
17 repairable, everything. What I'll do --

18 Q. No, no. Let me rephrase the question.
19 You don't understand what I am asking,
20 just tell me.

21 A. Okay.

22 Q. Listen careful, Mr. Walker.

23 A. Yes.

24 Q. You have used the phrase I would remove
25 myself from those conversations at those times when

1 you saw Mike and Cilo having a conversation.

2 A. Yes.

3 Q. What do you mean when you say that you
4 removed yourself? Does that mean you physically moved
5 away?

6 A. Yes.

7 Q. How far away would you approximately move
8 on those occasions? Would you move down the block?
9 Take a few steps? What are we talking about?

10 A. Like take a few steps away. Always be
11 around cars. So, I be right there, but not right up
12 in the face of the conversations.

13 Q. Did you not participate in the
14 conversations; is that what you mean?

15 A. Exactly.

16 Q. But there were occasions that you heard
17 what the conversations were as they were taking place;
18 yes or no?

19 A. Yes.

20 Q. And on how many occasions were you present
21 in or about the area where you were able to overhear
22 the conversations between Mike Ledeatte and Cilo?

23 A. I would say between two to, two to five
24 times. I'm not real sure.

25 Q. But five times?

1 A. Yes.

2 Q. About five times is answer?

3 THE COURT: Two to five times is the
4 answer.

5 Q. Counsel read you a question and answer
6 that you made in the grand jury back on September
7 27th, 1996. The question was:

8 "When you and Mike went to Alpine
9 Motors did you speak to Cilo?"

10 The answer is: "No, I didn't."

11 The question is: "How long along was
12 that?"

13 Answer was: "Two weeks ago."

14 What were you referring to?

15 A. To past events before the day of the
16 shooting or the day before the shooting.

17 Q. That early morning of the 26th, when you
18 were by that dumpster behind the Waldbaum's?

19 MR. SCHNEIDER: Sorry, 24th.

20 MR. PIACENTILE: Sorry. Withdrawn.
21 You are right.

22 Q. On the morning of the 24th?

23 MR. PIACENTILE: My mistake. Sorry.

24 Q. When you were by that dumpsters in the
25 morning hours on the 24th who did you expect was going

1 to show up to pick up that black Lexus?

2 MR. SCHNEIDER: Objection.

3 THE COURT: Sustained.

4 Q. Who were you waiting for?

5 MR. SCHNEIDER: Objection.

6 Q. At that time?

7 THE COURT: Overruled. You may answer.

8 A. Could you repeat, please.

9 THE COURT: Who were you waiting for?

10 THE WITNESS: I was waiting on Mike to
11 deliver the car to Cilo so I could take him home.

12 Q. What were the lighting conditions like by
13 the dumpster where you were when the shooting took
14 place by the dumpster? What were the lighting
15 conditions like?

16 A. It was that. It wasn't that bright.

17 Q. What were the lighting conditions like in
18 that bay area where the Lexus was parked?

19 A. It was more seeable that is where the
20 trucks come. It has more lights there.

21 Q. Counsel asked you a second question about
22 grand jury testimony that you gave three days after
23 the shooting. Do you recall those questions. Do you
24 recall that question and answer?

25 A. Could you read the question, please.

1 Q. All right. The question was:

2 "QUESTION: From there what happened?

3 "ANSWER: The other individual walked
4 over to the passenger side of the Lexus where
5 Cilo was at. Cilo then walked back over to the
6 driver's side. Mike was bent over inside the
7 car. While Mike's head was bent toward the
8 ignition I then saw Cilo slowly back out of the
9 car. Took his hands out of his pocket put a gun
10 to Mike's head. Shot him once. They both ran.
11 Got into the white card and sped off."

12 Do you remember that question and that
13 answer?

14 A. Yes.

15 Q. Did you actually see the gun used that
16 night?

17 A. No.

18 Q. But you did respond in the grand jury that
19 he put a gun to Mike's head; correct?

20 A. Yes.

21 Q. How, if you didn't see the gun, how do you
22 account for your testimony?

23 A. By hearing it.

24 Q. By hearing it.

25 A. Yes.

1 Q. After Mike had gotten shot you in fact
2 went over to the black Lexus; did you not?

3 A. Yes.

4 Q. Were the doors open or closed at that
5 point?

6 A. Open.

7 Q. Which doors were open?

8 A. Both.

9 Q. When you looked in, in what position was
10 Mike? Was he seated upright, slumped over in any way?
11 Was he bent over? What position was he in?

12 A. He was bent in the right. Bent right, the
13 center console.

14 Q. Bent to the right?

15 A. Yes.

16 Q. Did you observe a wound to his head?

17 A. I saw blood from behind his neck.

18 Q. What color was the interior of this Lexus?

19 A. Tan.

20 Q. And did you notice whether or not any
21 blood had spilled out into the interior of the Lexus
22 at that time?

23 A. No.

24 Q. Did you not notice?

25 A. No.

1 Q. Did you examine you said you were
2 behind --

3 After the shooting took place and after
4 the police found you with that telephone, you were
5 back around the back of the Waldbaum's; correct?

6 A. Yes.

7 Q. Did you look into the vehicle at that time
8 and see if there was blood on the inside of the Lexus?

9 A. No.

10 Q. You did not?

11 A. No. The cops had -- nobody could get.

12 Q. Cops weren't letting you near the car at
13 that point?

14 A. Exactly.

15 Q. Counsel asked you whether or not you
16 believed whether the person who did the shooting saw
17 you. Do you recall those questions?

18 A. Yes.

19 Q. In your mind at that time, shortly after
20 the shooting did you think that the shooter saw you?

21 A. No.

22 Q. Have you thought about it since?

23 A. Yes.

24 Q. And had you reached the same conclusion?

25 A. Well, at nights I wonder if somebody did

1 ever see so they come back for me or anything.

2 Q. You said you were scared when you were on
3 the telephone making the 911 call; correct?

4 A. Yes.

5 Q. How long did you wait to make the 911 call
6 after you went over to the car and saw that your
7 friend had been shot in the head?

8 A. Right away. I went right around to the
9 front.

10 Q. And were you scared when you made the 911
11 call?

12 A. Yes, I was.

13 Q. Afraid of what, tell the jury?

14 A. Afraid for my life. Afraid I was going to
15 get caught with the car that he -- afraid that he was
16 going to die and I was just scared about what was
17 going on. I never been in that situation before.

18 Q. Why were you afraid you might die?

19 A. Because he die. Have no idea what the
20 circumstances were, what happened. Why he decide. If
21 I was seen, possibly I could have been a victim
22 myself.

23 Q. Before the actual shooting itself, when
24 was the last time that you had seen Cilo at Alpine
25 Motors?

1 A. Earlier Tuesday.

2 Q. The same day?

3 A. Well, the Wednesday would be the shooting.

4 Early Wednesday morning. So, early Tuesday.

5 Q. And at that time when you saw Cilo at

6 Alpine Motors who else was present?

7 A. Michael.

8 Q. I'm sorry. Would you repeat that?

9 A. Mike.

10 Q. During that time, that specific time,
11 Alpine Motors, just answer yes or no, were you able to
12 observe whether or not Mike and Cilo had a
13 conversation; yes or no?

14 A. Yes.

15 (Transcript continued on next page. . .)

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There are no pages numbered 261-264.

1 Q. Did they in fact have a conversation? Yes or no?

2 A. Yes.

3 Q. And you expected Cilo would pick up that Lexus behind
4 Waldbaum's. Correct?

5 MR. SCHNEIDER: Objection.

6 THE WITNESS: Yes.

7 THE COURT: Sustained, but he's already answered.

8 MR. PIACENTILE: Your Honor, may I just have a
9 moment to go over my notes?

10 THE COURT: You can go over it.

11 MR. PIACENTILE: I understand, judge, if I--

12 THE COURT: Are you through with your questions?

13 MR. PIACENTILE: Your Honor, I'm not done.

14 THE COURT: Do you have questions, counsel?

15 MR. PIACENTILE: I just want to look and make sure
16 I didn't miss anything.

17 THE COURT: Well, sit down and study them.

18 (Pause.)

19 MR. PIACENTILE: Thank you. I have nothing
20 further.

21 THE COURT: Go ahead, counsel.

22 MR. SCHNEIDER: Thank you.

23 RECROSS-EXAMINATION

24 BY MR. SCHNEIDER:

25 Q. When you saw this shooter pull the gun from his jacket,

1 did he then reach in towards the car to get a closer shot at
2 Mike?

3 MR. PIACENTILE: Objection. Beyond the scope of--

4 THE COURT: Overruled.

5 THE WITNESS: No. It wasn't like he backed up,
6 pulled the gun out and waved it and shot him; everything was
7 done like (indicating) hand in pocket, discreetly, like it
8 was done, you know, discreetly.

9 Q. My question, though, is that after the gun was pulled
10 out, did the shooter lean closer towards the car in order to get
11 closer to Mike?

12 A. Yeah, like--yeah.

13 Q. How far from where you were, could you tell what was
14 the gun--

15 A. No.

16 Q. What's my question?

17 A. If I could tell what was the gun?

18 Q. No, you're ahead of me. Okay?

19 A. Okay.

20 Q. Was the gun inside the car at the time it was in the
21 shooter's hands when he fired?

22 A. From the distance, from the distance I was I couldn't
23 tell how far away the gun was.

24 Q. Well, were you able to see the hand extended?

25 A. No--

1 Q. Listen to my question, first, then you can say no if
2 you want.

3 A. Okay.

4 Q. Were you able to see the hand extended and some space
5 between the end of the hand and the door or was the arm inside,
6 a portion of the arm, inside the car?

7 MR. PIACENTILE: Objection. Asked and answered.

8 THE COURT: Overruled.

9 THE WITNESS: No. It was extended and pointed at
10 the--I just seen the movements and pow, that's what I saw.

11 Q. And when you saw the movements, was the shooter still
12 right next to or in--or partially inside the car right before
13 you heard the pop?

14 MR. PIACENTILE: Objection. Third time.

15 THE COURT: Overruled.

16 THE WITNESS: Right beside the car. I don't know
17 how far away he was like, he was right there. I couldn't
18 give you by inches how far away, or by feet, but--

19 Q. But you saw him right by the car?

20 A. Yes.

21 Q. You said before you were scared and you didn't, didn't
22 know what would happen. Isn't it true that in the past two and a
23 half years that this case was going on he hasn't threatened you?

24 A. Not personally, but I seen strange people coming around
25 the house. I'm not saying they're his associates, but I seen--

1 Q. And you never saw these strange people coming by the
2 house, you never saw them with him, have you?

3 A. No.

4 Q. Never seen them at Alpine Motors. Did you?

5 A. No. I haven't been back this--

6 Q. Well, let's say back in '96, did you ever see these
7 people who you say are strange coming to your house, did you
8 ever see them at Alpine?

9 A. They never came to my house personally, they just came
10 and parked on the block.

11 Q. So you saw some strange people on your block who you
12 thought were there to threaten you?

13 MR. PIACENTILE: Objection.

14 (No ruling made by the Court.)

15 THE WITNESS: No. In my mind I'm thinking that
16 because I'm feeling unsafe.

17 Q. That's my question, did they say anything to you to
18 threaten you in anyway verbally?

19 A. No, not verbally.

20 Q. Did anybody do anything to you or make any hand
21 gestures to you in a threatening way?

22 A. No.

23 Q. Did anybody take their hand, point to their head and
24 make believe somebody was shooting, anything like that
25 (indicating)?

1 A. No. But just now, before coming back in the courtroom
2 from lunch, he made a little--like a (making sound) and a face.

3 Q. Who's that, him (pointing)?

4 A. Yes.

5 Q. Well, you saw him outside. Right?

6 A. Yes. Coming back in the courtroom.

7 Q. So he went (making sound), he made a sound like sucking
8 his teeth. Right?

9 A. He looked at me with a face.

10 Q. He looked at you. Well, you're the guy accusing him of
11 murder. Right?

12 A. He is the one that did it.

13 Q. Should he be happy to see you?

14 MR. PIACENTILE: Objection.

15 THE COURT: Sustained.

16 Q. Well, at any time in the two-and-a-half years, did you
17 receive any phone calls or any threats from him, relatives or
18 friends of his to you?

19 A. No, not phone calls.

20 Q. Any letters?

21 A. Nothing.

22 Q. Anybody parked outside your house connection had to
23 him?

24 A. Not that I know of; people park outside the house,
25 though.

1 Q. Well, did you tell the police?

2 A. Yes. I did.

3 Q. Who?

4 A. I told the D.A. I told everybody.

5 Q. When?

6 A. Recently.

7 Q. I know, but my question is when this supposedly
8 happened to you that you got scared, did you pick up the phone,
9 dial the police and say, "I'm a potential witness in a homicide.
10 I'm afraid. I'd like you to protect me." Did you do that?

11 A. No.

12 MR. SCHNEIDER: I have nothing else.

13 MR. PIACENTILE: I have no further questions, your
14 Honor.

15 THE COURT: You may step down Mr. Walker.

16 (The witness descends the witness stand.)

17 THE COURT: All right. This is as far as we're
18 going to today. We will resume this trial tomorrow afternoon
19 at 2:30.

20 The medical examiner has set that time for us,
21 she'll be here tomorrow at 2:30 in the afternoon, so don't
22 go to work tomorrow morning because you have to come here at
23 2:30 and don't forget to come back at 2:30. Tomorrow.

24 Don't discuss the case, keep an open mind and
25 we'll see you tomorrow in the afternoon.

1 MR. PIACENTILE: Thank you, your Honor.

2 (The jury exits the courtroom.)

3 (This trial is adjourned until the following
4 afternoon, Tuesday, March 16th, 1999, at 2:30 P.M.)

5 (Continued on following page.)

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1 DATE: TUESDAY, MARCH 16, 1999
2 SUPREME COURT OF THE STATE OF NEW YORK
3 BRONX COUNTY : TRIAL TERM PART XXXI
4 INDICTMENT NUMBER: 7180/96
5 PEOPLE OF THE STATE OF NEW YORK

6 -against-

7 ANTONIO MALLET,

8 Defendant

9 BEFORE HONORABLE LAWRENCE TONETTI,

10 J U S T I C E.

11 APPEARANCES AS PREVIOUSLY NOTED.

12 TRIAL CONTINUED.

13

14 * * *

15

16 THE COURT: All right. Case on trial. I understand
17 all the jurors are here, officer?

18 THE SERGEANT: Yes, your Honor. They're all here.

19 THE COURT: All right. Bring the jury down,
20 please.

21 (The jury enters the courtroom.)

22 COURT CLERK: Case on trial continues. Note that
23 the Defendant is present, his attorney is present, the
24 assistant district attorney is present and also present are
25 our thirteen jurors.

1 THE COURT: Good afternoon, ladies and gentlemen.
2 We've finished our calendar this morning and we're ready to
3 start.

4 The medical examiner has been waiting patiently
5 and without further ado, call your next witness.

6 MR. PIACENTILE: The People would call Dr. Zoya
7 Shmuter.

8 Z O Y A S H M U T E R, M.D., assigned to the New York City
9 Medical Examiner's Office, Bronx County,
10 a witness called by and on behalf of the People, having
11 first been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PIACENTILE:

14 Q. Good afternoon, doctor.

15 A. Good afternoon.

16 Q. Please keep your voice raised so that everyone in the
17 room can hear you and please speak to the jury in response to my
18 questions.

19 You are a medical examiner for the City of New
20 York?

21 A. It is correct.

22 Q. Would you please explain to the jury what it is you do?

23 A. I am medical examiner in Office of Chief Medical
24 Examiner and as a medical examiner I perform autopsy, that is a
25 procedure on dead people in order to find the cause of death and

1 manner of death.

2 I testify in court and if it's necessary, I
3 participate in the scene of investigation.

4 Q. Have you been specially trained to perform this duty?

5 A. Yes. First of all I am a medical doctor. I graduate
6 medical school in Russia in 1961. I was pathologist abroad and I
7 came to this country and as a foreign medical doctor I had to
8 take again medical exams. I took them and I passed these exams
9 and then, because I was a foreign medical doctor, I have to do
10 again training in pathology and I did four years training
11 pathology in Michigan.

12 Then I took fellowship in forensic pathology in
13 Michigan, Detroit city, Office of Chief Medical Examiner and
14 from 1986 I work in New York as a medical examiner.

15 Q. Doctor, have you ever been qualified as an expert in
16 the field of forensic pathology in the state courts of New York?

17 A. Yes. Every time when I testify.

18 Q. And how many times have you testified and been
19 qualified as an expert?

20 A. Well, I don't know exactly but I assume more than three
21 hundred times.

22 MR. PIACENTILE: I'm going to offer the doctor for
23 what might be the three-hundred-and-first time as an expert in
24 the field of forensic pathology.

25 THE COURT: Counsel, Mr. Schneider, do you have

1 any objections, counsel, to his application?

2 MR. SCHNEIDER: No, your Honor.

3 THE COURT: Okay.

4 Ladies and gentlemen, what that means is this
5 witness is going to be permitted to testify and give an
6 opinion with respect to certain examinations and tests that
7 she conducted.

8 If you recall, all other witnesses must give
9 eye-witness testimony about what they allegedly saw and what
10 they heard. They can't give opinions, but she can, as a
11 qualified expert in the field of forensic pathology, give an
12 opinion with respect to her exams.

13 Proceed.

14 Q. Dr. Shmutter, you've been asked to come here today to
15 give testimony in respect to an autopsy that was conducted on
16 September the 25th, 1996. Did you bring the records of this
17 particular autopsy with you today?

18 A. Yes. I did and I review them before I came.

19 Q. And these records, whose records are they?

20 A. Doctor Montes perform autopsy on September 25, 1996,
21 and she's now retired so she couldn't come to testify. The
22 procedure in our office is that when we perform autopsy we
23 describe everything on telephone, on tape, everything what we
24 see, the physical examination, internal examination and external
25 examination and everything what we are doing and it's

1 everything; later on this is typed by a clerk and doctor review
2 this and this all paper related to autopsy report are in the
3 medical record in Manhattan and when we need, because sometimes
4 doctor are leaving our office or die or they go on vacation or
5 whatever, so we, it is objective papers that every doctor who
6 train forensic pathology can review and testify according to
7 what the doctor described during the autopsy.

8 Q. And you have those records with you today?

9 A. Yes. I do.

10 Q. And were those records kept and maintained in the
11 Office of the Medical Examiner of the City of New York?

12 A. That's correct.

13 Q. And you retrieved them from that office and brought
14 them with you to court today?

15 A. That is correct.

16 Q. And are you fully familiar with those records? Have
17 you had an opportunity to familiarize yourself with those
18 records and are you prepared to testify as to what those records
19 reflect?

20 A. Yes. But I would like permission, if it's necessary, to
21 look through to brush my memory.

22 THE COURT: Sure.

23 (Pause.)

24 Q. All right. Now doctor, do your records reflect upon
25 whom this autopsy was performed?

1 A. Yes. It was performed by Dr. Montes.

2 Q. But what was the name of the decedent, was that ever
3 determined?

4 A. The name of the deceased was Michael Ledeatte.

5 Q. Now what injury did Michael Ledeatte suffer that was
6 revealed by the examination of
7 Dr. Montes?

8 A. He had a single gunshot wound to the head with entrance
9 on the left side of the back (indicating) behind the left ear.

10 MR. PIACENTILE: The record should reflect that
11 the doctor pointed behind her left ear with her left index
12 finger.

13 THE WITNESS: And exit on the right side of his
14 head (indicating).

15 MR. PIACENTILE: The doctor again, this time with
16 her right index finger, indicated to a spot on the upper
17 right-hand portion of the head.

18 Q. Doctor, there was one bullet wound?

19 A. It was a single gunshot wound to the head, with
20 entrance and exit.

21 Q. Now was an examination made of the entrance and exit
22 wounds and was a notation entered into the official record?

23 A. Yes. It was.

24 Q. Please tell the jury what the examination revealed.

25 A. The deceased, as I mentioned, had a gunshot wound to

1 the head, the entrance behind the left ear. This was a hole a
2 quarter inch in diameter. There was no evidence of gun powder
3 residual near the wound, so doctor didn't see soot and gun
4 powder.

5 The gunshot wound was going through the skin and
6 the underlying soft tissue of the skull, going through the left
7 part of the brain to the right side of the brain, damaging
8 brain, causing bleeding along where the gunshot wound did pass,
9 causing destruction of the brain tissue, bleeding of the
10 'capsulary' that cover the brain and the doctor saw exit on the
11 right side of the head.

12 She found fragment bullet near the entrance and
13 she put initial of the deceased, L. and her initial M. on this
14 fragment and she found minute fragment near the exit of gunshot
15 wound (indicating) and she sent this to evidence for ballistic.

16 The gunshot wound was going from back to front
17 (indicating), left to right, and upward.

18 Q. Now when you say upward, what does that mean in medical
19 terms?

20 A. Well, we describe everything what we see, we see on the
21 body. We don't know in what position--

22 Q. Doctor, would you just let this plane pass overhead? I
23 don't know if you'll be heard over the plane, if I may just
24 interrupt.

25 (Pause.)

1 A. May I?

2 Q. Please continue.

3 A. We describe on the body, we measure distance from the
4 top of the head and so entrance was seven and half inches below
5 the top of the head and the exit here was four inches below the
6 top of the head, so if you imagine diagram of the body, so it's
7 going from left to right (indicating), from back to front and
8 upward.

9 Q. Doctor, are you familiar with the term tattooing?

10 A. Yes. I do.

11 Q. And what does tattooing indicate if it's found in or
12 around the area of a wound?

13 A. Well, we divide gunshot wounds on three category,
14 depending on where we see soot and gun powder.

15 When gun is fired, it release burn and burn
16 particles of gun powder and it's going to the wound so we divide
17 a gunshot wound on contact, gunshot wounds where gun is
18 immediately to the body, and (indicating) in this case we see
19 gun powder and soot inside the wound.

20 Then the close-range fire. It's roughly up to two
21 feet, depending on where it happened, it could be
22 one-and-a-half, three-and-a-half feet, but roughly two feet and
23 in this, the gun fired on this distance we usually see tattooing
24 or stippling because on burn particles of gun powder are going
25 through the skin and imbedded the skin, so it's impossible to

1 take it. We see this as tattooing.

2 And then the soot category. It's a distant
3 gunshot wound and we see nothing. We don't see gun powder at
4 all. It means that the gun was fired from distance roughly more
5 than two feet, could be three feet, four, we don't know. We call
6 this distant gunshot wound.

7 Q. In this particular case, what conclusion, if any, are
8 you able to draw from the fact that no tattooing was present
9 around the entry wound of this particular wound?

10 A. It's more than two feet.

11 Q. And that's more than two feet from the point where the
12 gun was fired to the surface of the head?

13 A. It is correct.

14 Q. You're not able to say if it's three feet, four feet,
15 five feet, et cetera, you're just able to say more than two
16 feet?

17 A. It is correct.

18 Q. Is there noted in the record anywhere how tall or how
19 heavy Michael Ledeatte was when his remains were received at the
20 M.E.'s office?

21 A. Yes. An autopsy was performed on a young man and he
22 measure six feet and weighing approximately 274 pound.

23 Q. Doctor, what portions of the brain did this bullet
24 travel through?

25 A. Well, it involved actually everything because it

1 perforated left occipital lobe of the brain, which is located on
2 the back (indicating); it perforated what we call parietal lobe
3 of the brain, this is on the side (indicating); it perforate
4 basal ganglion, which is inside of the brain.

5 COURT REPORTER: Sorry. I didn't understand that
6 last word.

7 THE WITNESS: Pons, P-O-N-S is also part of the
8 brain, and the cerebellum, so actually it was extensive,
9 massive injury to the brain and the multiple fracture of
10 skull bones.

11 Q. What was the effect on Michael Ledeatte of suffering
12 this wound?

13 A. He was dead.

14 Q. This was a fatal wound?

15 A. Yes. It was.

16 Q. And there's no doubt as to that?

17 A. I think it was a fatal wound, yes.

18 Q. Are you able to--now are you able to give an opinion as
19 to how much bleeding would have been attendant on this wound
20 from the exit side of the head?

21 A. Well, just, I'm just going to tell you that people
22 bleed differently; sometimes it could be a gunshot wound to head
23 and we don't even see bleeding, but other cases we do see a lot
24 of bleeding. It depends.

25 And in this case on the area of the exit, doctor

1 saw brain tissue also, so it would be bleeding from the gunshot
2 wound of the head. It also could be bleeding from the nose
3 because he had the multiple skull fracture including the front,
4 what we call orbital plates, so when they are fractured, people
5 could have bleeding through the nose.

6 Q. Doctor, if you were to be told, for the sake of the
7 example, that after receiving the gunshot wound this person was
8 slumped to the right-hand side (standing in front of jury,
9 slanting body to their left), would that information weigh in
10 your opinion as to how much bleeding you might expect in this
11 case?

12 A. Well, again I will say it could be a lot of bleeding,
13 it could be not. Depends on, in this case, it could be bleeding
14 because it was, as I mentioned, wound that even brain was
15 noticed here, but it could be from nose because skull fracture,
16 so--but as I mentioned, it could, in some cases of gun shot
17 wound to head there is no bleeding, so it depends.

18 Q. Do your records reflect whether Michael Ledeatte was
19 taken to a hospital before his remains were taken to the Medical
20 Examiner's Office?

21 A. Yes. He was admitted to the hospital and he was in fact
22 admitted on three or five I believe, in the morning and at the
23 same day, seven or five evening he was pronounced dead.

24 Q. Do your records reflect what if anything was done for
25 Michael Ledeatte at that hospital, and by the way, is that

1 Jacobi Hospital he was taken to?

2 A. Yes. It was.

3 Q. Do your records reflect what, if any, measures were
4 taken for Michael Ledeatte's medical well-being at the hospital?

5 A. Yes, exit wound was suture in the hospital. He had the
6 multiple intravenous marks from injection. He had the EKG pads
7 (indicating), so they try to resuscitate him.

8 Q. What--now when you said multiple intravenous marks, you
9 indicated on your chest?

10 A. Yes. Pads for EKG.

11 Q. What does that indicate to you?

12 A. That they tried to see if his heart was still beating.
13 Yes. And I have information that they resuscitated, but it was
14 unsuccessful; actually he was brain dead.

15 Q. At the hospital?

16 A. Yes. Because his pupils were dilated, he was brain
17 dead.

18 Q. Were tests done at the M.E.'s office to determine
19 whether or not alcohol was present in the blood of Michael
20 Ledeatte?

21 A. Yes. It is a routine procedure that we perform on
22 every victim we do. We check for alcohol and drugs and in this
23 case it was also performed and it was negative.

24 Q. And what was the cause of Michael Ledeatte's death?

25 A. He died because of gunshot wound to head with brain

1 perforation and skull fractures.

2 Q. Thank you, doctor.

3 MR. PIACENTILE: I have no further questions, your
4 Honor.

5 THE COURT: All right. Thank you.

6 Mr. Schneider, do you want to cross-examine?

7 CROSS-EXAMINATION

8 BY MR. SCHNEIDER:

9 Q. Good afternoon, doctor. I just would like to clarify
10 one or two things regarding this concept of tattooing?

11 A. Yes.

12 Q. Is it also referred to as stippling?

13 A. It's the same.

14 Q. Okay. That's basically when the gun powder that is
15 forced out of the barrel, depending on the distance, get
16 imbedded in the skin. Correct?

17 A. It is correct.

18 Q. Now you indicated, the last thing you said was that if
19 there is no stippling or tattooing by the wound, it indicates
20 that it was more than two feet from where the gun was fired.
21 Correct?

22 A. If we don't see it, yes. We make this conclusion.

23 Q. Okay. Just so it's clear, it's more than two feet from
24 the end of the barrel. Correct?

25 A. It is correct.

1 Q. It's not where the person is standing, because if a
2 person has long arms, obviously the distance is affected.
3 Correct?

4 A. It is correct.

5 Q. So if the body of the deceased, if that location is two
6 feet from the very closest end of the gun barrel?

7 A. It is correct.

8 Q. That's the distance you're referring to. Correct?

9 A. Correct.

10 Q. Thank you.

11 MR. SCHNEIDER: I have nothing else.

12 Thank you, your Honor.

13 THE COURT: Mr. Piacentile?

14 MR. PIACENTILE: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. PIACENTILE:

17 Q. Michael Ledeatte was first taken to Jacobi Hospital.
18 Correct?

19 MR. SCHNEIDER: Objection.

20 THE COURT: Overruled.

21 Q. Correct, doctor?

22 A. What did you say?

23 Q. Michael Ledeatte was first taken to Jacobi Hospital.
24 Correct?

25 A. If what? I didn't understand you.

1 Q. The deceased in this case, your records indicate he was
2 first taken to Jacobi Hospital?

3 A. Yes.

4 Q. And they tried to resuscitate him. Correct?

5 A. Yes. They tried.

6 Q. When a person is brought to a hospital with a head
7 wound, does the hospital, in an attempt--when they attempt to
8 treat that wound, do they clean that wound?

9 A. I don't know what they do.

10 Q. Would that be accepted medical procedure?

11 A. I don't know what they do. I don't think so.

12 Q. All right. Thank you doctor. No further
13 questions--Doctor, you can't wash off tattooing with soap and
14 water, can you?

15 A. No. Of course not. You can wash soot.

16 Q. Soot is like dirt?

17 A. Right. But--well, soot is not dirt. It is burn
18 particles from gun powder, but you couldn't wash tattooing.

19 Q. So if someone has tattooing or stippling, the gun
20 powder particles get imbedded underneath the skin. Correct?

21 A. It is correct.

22 Q. And when you're treating a wound, if you were to even
23 shave off hair or wash it with soap and water, the tattooing or
24 stippling would remain under the skin. Correct?

25 A. Correct. We never wash before we do and check.

1 Q. Thank you, doctor.

2 MR. PIACENTILE: No further questions.

3 THE COURT: Thank you, doctor.

4 THE WITNESS: You're welcome.

5 THE COURT: You're excused.

6 (The witness descends the witness stand.)

7 THE COURT: Ladies and gentlemen, since we've
8 finished early today, what I would like to do today is we
9 have a number of photographs that were received in
10 evidence. I think that the witnesses pretty much held them
11 up and you were able to see them, but since these items are
12 now in evidence, I'm going to ask that they be published,
13 which means the officer is going to give them to you now to
14 examine.

15 Now don't take all day to look at them. Remember
16 that these items are in evidence. They will be available to
17 you up in the juryroom during the course of your
18 deliberations.

19 But since we've talked about them, we might as
20 well show them to you. Let's make sure we have the right
21 ones now. There should be People's 1.

22 MR. PIACENTILE: 1 through 7.

23 THE COURT: 1 through 7.

24 MR. PIACENTILE: And People's 13, your Honor.

25 THE COURT: And People's 13. Well, we have 8 and

1 9, which were marked for I.D., and 1 through 7 and the
2 blowup sketches COURT OFFICER: 1 through 7 and 13.

3 MR. PIACENTILE: I thought 13 was entered, judge?

4 THE COURT: Yes. 13 was entered. Okay.

5 (Photographs are published to the jury.)

6 MR. PIACENTILE: Judge, may counsel and I just
7 approach while they're looking at the photographs?

8 THE COURT: Sure.

9 (Off-the-record discussion.)

10 THE SERGEANT: Your Honor, all the exhibits have
11 been published to the jurors.

12 THE COURT: All right. Thank you.

13 Ladies and gentlemen, the Court told you at the
14 very beginning that I would give you some advance notice as
15 to where we stood.

16 I just talked to the lawyers and we're going to
17 finish up the testimony tomorrow and then give the case to
18 the jury on Thursday, thursday morning. So that if there is
19 to be a sequestration, it'll come Thursday. That day you'll
20 come prepared with all your stuff, the officers will go give
21 you instructions so if any of you may have some plans, you
22 can tell your loved ones is that there is a possibility that
23 you might not be home Thursday. And then again, you might,
24 it depends on the deliberations and how they go.

25 All right. One last thing before we let you go:

1 The lawyers have agreed to stipulate with respect to what is
2 called the body I.D.

3 One of the things that the district attorney would
4 have to prove in this case is that there was indeed a man
5 named Michael Ledeatte who was the victim of this shooting
6 and both sides have agreed to stipulate to that without the
7 necessity of bringing in any witnesses to testify to it;
8 that the person who was shot in the vehicle behind
9 Waldbaum's was Michael Ledeatte and the very same person
10 that the doctor testified to in the autopsy was the victim
11 of this fatal gunshot wound, so that's the testimony.

12 Okay. Then I would like you all to return here
13 tomorrow morning at 10:00 A.M. when we will resume the trial
14 of this case.

15 Don't discuss the case with anybody. Keep an open
16 mind and we'll see you tomorrow.

17 (The jury exits the courtroom.)

18 THE COURT: Gentlemen, see you tomorrow.

19 MR. SCHNEIDER: Good night, your Honor.

20 (This trial is adjourned until the following day,
21 Thursday, March 17th, 1999, at 10:00 A.M.)

22 (Continued on following page.)
23
24
25

1 DATE: WEDNESDAY, MARCH 17, 1999
 2 SUPREME COURT OF THE STATE OF NEW YORK
 3 BRONX COUNTY : TRIAL TERM PART XXXI
 4 INDICTMENT NUMBER: 7180/96
 5 PEOPLE OF THE STATE OF NEW YORK

6 -against-

7 ANTONIO MALLET,

8 Defendant

9 BEFORE: THE HONORABLE LAWRENCE TONETTI,

10 J U S T I C E.

11 APPEARANCES AS PREVIOUSLY NOTED.

12 TRIAL CONTINUED.

13

14

* * *

15

16 (Please note that an 8 x 10 colour photograph of a
 17 black Lexus is received and premarked People's Exhibit
 18 Number 15 for identification.)

19 THE COURT: Are we all set?

20 COURT CLERK: Yes, your Honor.

21 THE COURT: Okay. Jury down.

22 (The jury enters the courtroom.)

23 COURT CLERK: The case on trial continues. Note
 24 for record the record the Defendant is present, his attorney
 25 is present, the assistant district attorney is present and

1 also present are our thirteen jurors.

2 THE COURT: Good morning, ladies and gentlemen.

3 Are we ready to continue?

4 MR. PIACENTILE: Yes, your Honor.

5 THE COURT: Next witness.

6 MR. PIACENTILE: I call Detective Babuin.

7 M A R K B A B U I N, Detective, shield number 691, assigned to
8 the Crime Scene Unit, New York City Police Department,
9 a witness called by and on behalf of the People, having
10 first been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. PIACENTILE:

13 Q. Detective, please keep your voice raised so everyone
14 can hear you. It's a big, big courtroom.

15 A. Yes.

16 Q. By whom are you employed?

17 A. The New York City Police Department.

18 Q. And what's your current grade?

19 A. Detective.

20 Q. And how long have you been employed by the New York
21 City Police Department?

22 A. Sixteen years.

23 Q. And what do you do for the police department now?

24 A. I work for the Crime Scene Unit.

25 Q. How long have you been working for the Crime Scene

1 Unit?

2 A. Five years.

3 Q. What do you do for the Crime Scene Unit?

4 A. Well, we're a group of detectives who respond to calls
5 from the precinct detectives to help assist them in various
6 crimes, mostly it's homicides, felony assaults, rapes or pattern
7 crimes.

8 Q. Now, I want to draw your attention--

9 THE COURT: Hold on a second. We're having trouble
10 with that blind again.

11 (Pause.)

12 THE COURT: All right.

13 Sorry. Do you know where you left off?

14 MR. PIACENTILE: Yes, sir.

15 THE COURT: Good.

16 Q. I want to draw your attention to September the 25th,
17 1996.

18 A. Yes.

19 Q. Were you working as a detective in the Crime Scene Unit
20 on that date?

21 A. I was.

22 Q. And did you become involved in the investigation of a
23 case that had originated a day earlier?

24 A. Yes. I did.

25 Q. And how was it that you were assigned to this

1 investigation?

2 A. I was dispatched from my office to respond to the 49th
3 Precinct to assist. In our office we have a lineup and I just
4 fell into the next rotation to go out and respond to the next
5 job that came in. My partner and I then responded to this job.

6 Q. And who's your partner in this case?

7 A. Detective Dunn.

8 Q. Now, you went, you say, to the 49th Precinct.

9 A. That's correct.

10 Q. And is that here in the Bronx?

11 A. Yes.

12 Q. When you got to the 49th Precinct, what, if anything,
13 did you do in connection with your job on that date?

14 A. I went into the garage of the precinct where they were
15 storing a Lexus, a black Lexus, and I was told by Detective
16 Watkins that they wanted the Lexus photographed and
17 fingerprinted for latent fingerprints.

18 Q. Now, did you in fact photograph the Lexus?

19 A. I did.

20 MR. PIACENTILE: I'm going to ask that what has
21 been premarked as People's 15 for identification be shown to
22 the witness.

23 Q. You're holding in your hand a photograph. Are you not?

24 A. Yes.

25 Q. Do you recognize the photograph?

1 A. I do.

2 Q. What do you recognize it to be?

3 A. It's a photograph of the black Lexus that I had taken
4 that day, showing the exterior passenger side of the vehicle.

5 Q. And you took the photo. Correct?

6 A. Yes.

7 Q. Just so we're clear, where was that car when you
8 photographed it?

9 A. In the garage of the 49th Precinct.

10 Q. All right. Now were you made aware that this car was
11 involved in an incident that took place in the back of a
12 Waldbaum's Supermarket off Gun Hill Road in the Bronx?

13 A. Yes.

14 Q. Did you ever go to the rear of the Waldbaum's
15 supermarket in the course of the dispatch of your duties?

16 A. No.

17 Q. Is that photograph a fair and accurate representation
18 of how the passenger side of that Lexus looked when you
19 performed whatever work or tests on it that you performed?

20 A. Yes.

21 MR. PIACENTILE: I'm going to ask that be accepted
22 as People's 15 in evidence.

23 THE COURT: Do you have any objection?

24 MR. SCHNEIDER: No objection.

25 THE COURT: It'll be received.

1 (People's Exhibit Number 15 is marked in
2 evidence.)

3 Q. When you first approached that Lexus, did you look at
4 it?

5 A. Yes.

6 Q. Inside and out?

7 A. Yes.

8 Q. Was there anything unusual about the inside that you
9 recall?

10 A. There was blood on the front seats.

11 Q. How much blood, if you recall?

12 A. There was quite a few blood, (sic) amount of blood
13 under the passenger seat, some on the driver's seat and on the
14 centre console of the vehicle.

15 Q. Did you take photographs of that?

16 A. Yes.

17 Q. What tests, if any, did you--other than photographing
18 this car, did you perform any tests?

19 A. Yes.

20 Q. What did you do?

21 A. I processed the vehicle for latent fingerprints.

22 Q. And have you been trained to do that?

23 A. Yes.

24 Q. How?

25 A. I was trained five years ago when I entered the Crime

1 Scene Unit by the Crime Scene Unit training staff and also the
2 FBI and their training sessions down at 1 Police Plaza.

3 Q. And have you been previously accepted in the field of
4 fingerprint lifting--in the field of fingerprinting in the state
5 courts in New York State?

6 A. In the field of processing for fingerprints, yes.

7 Q. Have you ever been denied expert status?

8 A. No.

9 MR. PIACENTILE: I'm going to ask that the witness
10 be deemed an expert in that field for this purpose.

11 THE COURT: Any objection?

12 MR. SCHNEIDER: No objection, your Honor.

13 THE COURT: The testimony of this witness, like
14 the preceding one, will be received as that of an expert in
15 the field of fingerprint processing and photographing the
16 crime scene, et cetera.

17 MR. PIACENTILE: Thank you.

18 Q. What did you do with this car?

19 A. First I photographed the car, exterior and interior,
20 and then I preserved it for latent fingerprints by using a white
21 fingerprint powder.

22 Q. Would you explain to the jury what you mean by a latent
23 fingerprint?

24 A. A latent fingerprint only means it's invisible and a
25 fingerprint is only the friction ridges of your finger, those

1 little spirals that we all have. It's when people sweat, oils
2 from their skin is transposed from your finger to a surface.
3 It's not visible until it's processed with something to show it,
4 to bring it out. That's what I mean when I say white powder,
5 that's what the white powder does.

6 Q. And did you examine this vehicle for fingerprints?

7 A. Yes.

8 Q. What portions of this vehicle did you examine for
9 fingerprints?

10 A. The interior, the driver's side of the vehicle near the
11 door location, the exterior passenger-side door, the door locks
12 specifically, the handle, the interior, the rearview mirror of
13 the vehicle and there was a champagne bottle inside the vehicle,
14 so that also.

15 Q. And what did you have to do in order to--well, what
16 does the term dust for fingerprints mean?

17 A. We--dust is fine, yes, sir.

18 Q. And did you in fact do that?

19 A. Yes.

20 Q. Tell the jury how that was done.

21 A. We have, we use a feather duster, like a little wand
22 with marabou feathers on one end. We do that in white
23 fingerprint powder. The vehicle is black so the white comes up,
24 it's better to see. It comes up the opposite colour so you can
25 see it better.

1 Q. If the vehicle had been a white vehicle, what kind
2 fingerprint powder would you use?

3 A. The opposite colour, black, in that case is what we
4 would use.

5 Q. Are those fingerprints powders are basically the same?

6 A. Yes.

7 Q. All right. Please continue.

8 A. I would then dip the brush in the powder and then I
9 would gently brush the car with the fingerprint powder on the
10 feather duster; the whole car, interior and exterior and any
11 latent fingerprints, again the oils that are transported on that
12 car would adhere, the powder would adhere to it and you'll see
13 the outlines of the ridges of people's, persons' fingers and
14 then I would lift that with extremely fine fingerprint tape,
15 it's almost like Scotch tape, a little whiter, but very sticky
16 and I remove it that way and on the tape now you have those
17 spirals with the white powder. I then place it on the white
18 fingerprint plastic card and I bring it back to my office.

19 Q. Did you do that in this case?

20 A. Yes.

21 Q. Did you lift any impressions--well, first of all what
22 is an impression?

23 A. An impression is, I would call it a three dimensional
24 fingerprint or imprint on something, like a finger into mud or
25 butter, that would be an impression, three dimension, height,

1 depth and width. Imprint would be just two dimensional and on a
2 hard surface like a wood, just the fingerprint on that.

3 Q. Did you recover any imprints from this car?

4 A. Yes. I did.

5 Q. What did you do with them?

6 A. After I brought them back to my office I packaged them
7 up, I logged them, filled out a form for them and then I put
8 them in an envelope, sealed the envelope, shut it, when I sealed
9 it I taped it shut so it could not be entered and then it was
10 delivered by our messenger in our office, hand delivered to 1
11 Police Plaza to the Latent Fingerprint Unit so then an examiner
12 can read those fingerprints.

13 Q. Now afterward did you receive a report from the police
14 department indicating that those prints had been examined by an
15 examiner?

16 A. Yes.

17 Q. And is that fellow's name Detective Daniel Perruzza?

18 A. Yes.

19 Q. And you received that report back?

20 A. Yes.

21 Q. What was the result of that report?

22 A. He wrote no value on the report.

23 Q. Now do you understand what the term no value signifies?

24 A. Yes.

25 Q. Explain to the jury what is that significance?

1 A. The examiner looks for X-amount amount of points, what
2 they call points to make an identification of a fingerprint.
3 When they say no value, there wasn't enough points to make any
4 identification of the fingerprints, so they don't know whose it
5 is.

6 Q. Now, are the areas from where you took these imprints
7 off the car visible on the photograph that you have in front of
8 you?

9 A. Yes.

10 MR. PIACENTILE: With the Court's permission, I'm
11 going to ask that you hold up that photograph and using your
12 finger or a pen or whatever, show the jury and explain to
13 them what areas you lifted imprints from.

14 THE WITNESS: Visible from this photo (indicating)
15 is the exterior front passenger door handle, right here
16 (holding up photograph).

17 MR. SCHNEIDER: I can see. Thank you.

18 Q. And anywhere else?

19 A. Yeah. On the, well you really can't see it here, the
20 driver's side door, right by the interior door handle. Also if I
21 may, the interior front passenger window, from here, and the
22 rearview mirror, here.

23 Q. All right. Now the passenger-side door handle of this
24 particular car, that's clearly visible in the photograph?

25 A. Yes.

1 Q. All right. What kind of door handle is on this
2 particular model car?

3 A. It's a handle that lifts up to open the door.

4 Q. So in order to open that you have to put your fingers
5 up underneath the handle and lift?

6 A. Yes.

7 Q. These imprints that you took, were any imprints taken
8 from underneath that door handle where the fingers would come
9 into contact to activate the mechanism of the door?

10 A. No.

11 Q. Are you familiar with the term smudge as it relates to
12 fingerprints?

13 A. Yes.

14 Q. Explain to the jury what a smudge is?

15 A. A smudge is if you take your finger and put it on a
16 surface and then you just press down hard, you obliterate those
17 friction ridges that you would have left; when I process it,
18 you'll just see a line coming through and sometimes it's the
19 shape of a finger, but you just see a streak. That's considered
20 a smudge.

21 Q. Did I understand you to say that some imprints were
22 taken from the passenger-side door?

23 A. Yes.

24 Q. Where on the passenger-side door, if you can recall?

25 A. On my notes, if I may look at my notes, your Honor?

1 THE COURT: Sure.

2 THE WITNESS: The interior door lock panel.

3 Q. What is the interior door lock panel?

4 A. It was a wood grain surface next to the latch to open
5 the doors.

6 Q. That's on the inside of the vehicle?

7 A. Yes.

8 Q. Now, of all the imprints that you took, none proved of
9 any value?

10 A. That's correct.

11 Q. Based on the results obtained from the fingerprint
12 analysis in this case, is it possible to either include or
13 exclude anyone as having come in contact with this car?

14 A. No.

15 MR. PIACENTILE: I have no further questions of
16 this witness.

17 THE COURT: Mr. Schneider?

18 MR. SCHNEIDER: I have no questions.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you.

21 (The witness descends the witness stand.)

22 THE COURT: Your next witness, counsel.

23 MR. PIACENTILE: Yes, your Honor. The People call
24 Detective Kevin Tracy.

25 May I just have a moment with the witness, your

1 Honor?

2 THE COURT: Yes.

3 MR. PIACENTILE: Thank you.

4 BY K E V I N T R A C Y, Detective, shield number 2083,
5 assigned to the Detective Borough, Bronx, New York City Police
6 Department,

7 a witness called by the People and
8 first been duly sworn, testified as follows.

9 DIRECT EXAMINATION

10 BY MR. PIACENTILE:

11 THE COURT: Proceed.

12 Q. Detective, please keep your voice raised in a loud
13 voice so that everyone in the courtroom can hear you. All right?

14 A. Yes.

15 Q. How long have you been employed by the New York City
16 Police Department?

17 A. Approximately sixteen years.

18 Q. How long have you been a detective?

19 A. Approximately ten years now.

20 Q. I want to draw your attention back to September the
21 24th, September the 25th and September the 26th, 1996. Where
22 were you assigned during that three-day period of time?

23 A. I was assigned to the 49th Precinct Detective Squad.

24 Q. And is the area or the location 1750 East Gun Hill
25 Road, does that fall within the confines of the 49th Precinct?

1 A. Yes.

2 Q. And did it fall within those confines back in September
3 of 1996?

4 A. Yes.

5 Q. Now, do you recall whether or not you became involved
6 in the investigation of a shooting that took place behind the
7 Waldbaum's located at 1750 East Gun Hill Road at or about that
8 time?

9 A. Yes. I did.

10 Q. Now during the course of your participation in the
11 investigation of those events, did you ever visit that location?

12 A. No. I did not.

13 Q. Did you ever go in or behind the Waldbaum's located at
14 1750 Gun Hill Road?

15 A. No. I did not.

16 Q. How was it that you became involved in the
17 investigation of the events that occurred behind that Waldbaum's
18 on September the 24th, 1996? Briefly tell the jury.

19 A. Well, when I arrived at work--

20 Q. Keep your voice up.

21 A. When I arrived at work on the morning of September
22 24th, 1996, I had a conversation with my commanding officer at
23 the time, Lt. Daye (phonetic). He informed me there was a
24 homicide in the location you mentioned and he asked me if I
25 would interview a potential witness by the name of Gregory

1 Walker.

2 Q. Now, did you in fact participate in an interview of a
3 person that you now know to be Gregory Walker?

4 A. Yes. I did.

5 Q. Where did these interviews take place, detective?

6 A. The interviews took place at the 49th Precinct
7 Detective Squad.

8 Q. At the time that you interviewed
9 Mr. Walker, did you know any of the particulars of the
10 occurrence in and behind the Waldbaum's at 1750 East Gun Hill
11 Road?

12 A. Well, I knew that the homicide occurred behind the
13 Waldbaum's, that the victim, Michael Ledeatte, had been shot in
14 the head and that he was in a stolen vehicle at the time of his
15 death and again, there was a potential witness by the name of
16 Gregory Walker.

17 Q. At the time you spoke to Mr. Walker, did you know how
18 many times Mr. Ledeatte had been shot?

19 A. No. I did not.

20 Q. Were you, to your knowledge, the first detective or
21 member of the New York City Police Department to speak to or
22 formally interview
23 Mr. Gregory Walker in connection with these events?

24 A. No. I was not.

25 Q. Do you know who preceded you in this interview or in

1 the interview process?

2 A. Well I know Detective Nieves, who was assigned this
3 homicide investigation, Detective Gannon interviewed Gregory
4 Walker and other detectives may have. I don't know about that.

5 Q. At the time you first interviewed Gregory Walker, did
6 you know whether or not he had spoken to any uniformed police
7 officers prior to speaking to you in connection with this case?

8 A. I was not aware of that.

9 Q. At the time that you interviewed Gregory Walker, did
10 you know whether or not he had made any written or signed
11 statements to any member of the New York City Police Department
12 in connection with this incident?

13 A. No. I did not.

14 Q. Where did your interview with Gregory Walker take
15 place?

16 A. At the 49th Precinct Detective Squad.

17 Q. Now just briefly describe to the members of the jury
18 what you mean by the Detective Squad, the physical layout. I
19 don't mean what the Detective Squad does.

20 A. It's just a separate office, separate from the
21 uniformed officers downstairs. It's up on the second floor. We
22 investigate all types of crimes, everything from assaults to
23 homicides to leaving the scenes of accidents.

24 Q. You did in fact interview Gregory Walker?

25 A. Yes. I did.

1 Q. Did he in fact make a statement ultimately to you?

2 A. Yes. He did.

3 Q. During the course of your interview, did you have an
4 opportunity to observe Gregory Walker?

5 A. Yes. I did.

6 Q. Did you have an opportunity to observe his demeanour?

7 A. Yes. I did.

8 Q. What was his demeanour as you observed it?

9 MR. SCHNEIDER: Objection.

10 THE COURT: Sustained. Just describe what you saw.
11 You can describe what you saw to the jury about the witness.

12 THE WITNESS: Well, the witness was visibly
13 shaken. He was sweating profusely and he stated to me
14 numerous times--

15 MR. SCHNEIDER: Sorry. Objection to--

16 THE COURT: To what he stated?

17 MR. SCHNEIDER: What the witness stated to him.
18 Yes.

19 THE COURT: Did you write it down, this statement
20 that you took?

21 THE WITNESS: Well, I eventually wrote down a
22 statement from him, yes, sir.

23 THE COURT: Overruled.

24 MR. SCHNEIDER: Do you mind if I may have a time
25 frame? because there's a long gap and I think it should be

1 clarified.

2 MR. PIACENTILE: I'll withdraw that portion of the
3 question, your Honor. No problem.

4 Q. For what period of time were you speaking to Gregory
5 Walker during the course of taking this statement? Do you
6 recall? Is it a brief time, a long time? What was it?

7 A. I spoke to him from approximately 1:00 P.M. till
8 approximately 10:00 that night, 10:30 that night.

9 Q. Continuously or on and off?

10 A. No. It wasn't on a continual basis.

11 Q. And during that time did you say anything to him
12 concerning--did you say anything--withdrawn.

13 During the course of the time that you spoke to
14 Gregory Walker, did you observe anything in his demeanour--

15 MR. SCHNEIDER: Objection.

16 THE COURT: Sustained.

17 Q. During the course of your interview, how long did it
18 take for Gregory Walker to speak to you concerning the facts of
19 this--yes, the facts surrounding this case?

20 A. Well, to eventually get to the fact and to get to the
21 truth it took approximately seven, eight hours.

22 Q. And did you have to say anything to him in order to
23 arrive at that point where he became forthcoming?

24 MR. SCHNEIDER: Objection.

25 THE COURT: Sustained.

1 Q. What did you say to him?

2 THE COURT: Only as to form.

3 MR. PIACENTILE: I understand, judge.

4 Q. What did you say to him before he started to make his
5 statement to you?

6 MR. SCHNEIDER: Objection.

7 THE COURT: Sustained.

8 Q. At what time did he make this statement to you?

9 MR. SCHNEIDER: Objection. Which statement, your
10 Honor?

11 A. Approximately--

12 THE COURT: I think he said seven or eight hours.
13 Isn't that right?

14 THE WITNESS: Yes.

15 THE COURT: So what's the question?

16 Q. The statement that Gregory Walker ultimately gave to
17 you, was that reduced to a writing?

18 A. Yes. It was.

19 Q. And was it signed by anyone?

20 A. Yes.

21 Q. By whom?

22 A. By the witness, Gregory Walker, myself and two other
23 detectives.

24 Q. And that would be Detective Nieves and Detective
25 Gannon?

1 A. Yes.

2 Q. What had you said to Gregory Walker preceding the
3 taking of that statement to induce him to make that statement?

4 MR. SCHNEIDER: Objection.

5 THE COURT: Sustained as to form.

6 Q. What did you say to Gregory Walker prior to his making
7 that statement?

8 MR. SCHNEIDER: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: Well, uhm, I basically told him
11 that--I was trying to alleviate his fears. He indicated to
12 me that he was scared. I told him that if it was a matter
13 of being scared or a matter of him wanting to relocate to a
14 different location, live in a different place, that we would
15 be able to do that for him, we would be able to provide him
16 with housing if he felt that he needed it.

17 Q. Now, he ultimately gave you a statement which was
18 reduced to a writing. Is that correct?

19 A. Yes.

20 Q. Before he made that ultimate written statement to you,
21 were his Miranda rights issued to him?

22 A. Yes. They were.

23 Q. By whom?

24 A. By Detective Nieves and by Detective Gannon.

25 Q. What prompted the issuance of those rights to Gregory

1 Walker?

2 MR. SCHNEIDER: Objection.

3 THE COURT: No. Overruled. I'm going to allow it.

4 It's an area that you're going to have to go into also, I'm
5 sure.

6 THE WITNESS: Because of Mr. Walker's statements
7 of being involved with stolen vehicles.

8 Q. Now are you familiar with the name Antonio Mallet?

9 A. Yes. I am.

10 Q. Do you see Mr. Mallet in court today?

11 A. Yes. I do.

12 Q. Who do you mean by Antonio Mallet?

13 A. I see him seated with the green shirt on over there
14 (pointing).

15 MR. PIACENTILE: Indicating the Defendant.

16 Q. Now did Mr. Mallet surrender at the 49th Precinct
17 sometime in the early afternoon of September the 26th, 1996?

18 A. Yes. He did.

19 Q. What efforts had been made between September the 24th
20 and September the 26th to reach out to Mr. Mallet by the 49th
21 Precinct?

22 A. Well, visits were made to a used car dealership, Alpine
23 Motors; from that point in time a member of the United States
24 Marshal Service contacted the 49th Precinct Detective Squad and
25 basically stated that he had a conversation with

1 Mr. Mallet and that Mr. Mallet had heard--

2 Q. Well, that's all--

3 MR. SCHNEIDER: May he finish, please, your Honor?

4 He wasn't finished.

5 THE COURT: Absolutely. He hadn't finished.

6 Q. All right. Fine. Finish it.

7 A. Mr. Mallet had some information that the 49th Precinct
8 Detectives were looking for him and this member of the United
9 States Marshal Service stated that he knew of Mr. Mallet's
10 whereabouts, he knew how to contact him and he informed us that
11 he would make him available to us at the 49th Precinct Detective
12 Squad and have him surrender.

13 Q. Now on September the 26th 1996, did in fact Antonio
14 Mallet surrender himself to the 49th Precinct Detectives?

15 A. Yes. He did.

16 Q. Was he escorted by anyone or did he come in by himself?

17 A. He came in by himself.

18 Q. Now at that time or later that day, did you conduct an
19 official--withdrawn.

20 Later that same day, was a lineup conducted in
21 this case?

22 A. Yes. There was.

23 Q. Now what do you mean by a lineup? just so we're clear.

24 A. Basically, if a person's been identified in a crime and
25 this person, whether he's known or unknown to the witness--

1 MR. SCHNEIDER: I'm sorry your Honor, I can't
2 hear.

3 THE WITNESS: I'm stating whether he's known or
4 unknown to the witness, the person is placed into a lineup
5 with five other individuals. The witness is then brought
6 into the viewing room. He then views that subject, plus the
7 five additional fillers is what they're known as and
8 attempts to identify the person.

9 Q. Now was a lineup in fact conducted with respect to Mr.
10 Mallet in this case?

11 A. Yes. There was.

12 Q. And was that done in the 48th Police Precinct?

13 A. Yes. It was.

14 Q. Were you present when that was done?

15 A. Yes.

16 Q. I want to show you what's been received as People's 13.
17 Please take a look at that. Do you recognize what that is?

18 A. Yes. I do.

19 Q. What is that?

20 A. It's a Polaroid photograph of the lineup that was
21 conducted on September 26th and in this lineup was the
22 Defendant, Antonio Mallet.

23 Q. Do you know what seat he occupied?

24 A. Seat number 4.

25 Q. Thank you. That's, I take it, a fair and accurate

1 representation of how the lineup looked?

2 A. Yes. It is.

3 Q. Thank you.

4 A. Thank you.

5 THE COURT: Cross-examine.

6 CROSS-EXAMINATION

7 BY MR. SCHNEIDER:

8 Q. Good morning, detective.

9 A. Good morning.

10 Q. You and I have seen each had before in court. Correct?

11 A. Yes.

12 Q. Now if I ask you anything that you don't understand,
13 please tell me and I'll try to rephrase it?

14 A. Thank you.

15 Q. When you were speaking to Gregory Walker, did you ever
16 tell him that the victim was shot twice in the head?

17 A. No. I did not.

18 Q. Did you ever hear any other detective tell Gregory
19 Walker that the victim was shot twice in the head?

20 A. No, sir. I did not.

21 Q. Now, you said that when you spoke to Mr. Walker--well,
22 withdrawn.

23 When you first spoke to Mr. Walker, that was
24 around 1:00 in the afternoon, give or take. Correct?

25 A. Yes.

There are no pages numbered 321-326.

1 Q. And ultimately he gave you a written statement in his
2 hand that he signed, Detective Nieves signed, Detective Gannon
3 signed and you signed at about 10:30 P.M. Correct?

4 A. Correct.

5 (Continued on following page.)
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1 CROSS EXAMINATION

2 BY MR. SCHNEIDER:

3 Q. Now, during that period from about one
4 until 10:30, you would speaking to Mr. Walker
5 periodically in and out; correct?

6 A. That's correct.

7 Q. For a total of maybe two hours in total;
8 isn't that correct?

9 A. That's correct. Sir, yes.

10 Q. Sorry?

11 A. That's correct, yes.

12 Q. Now, when you said that you wanted to
13 alleviate his fear because he appeared scared, was
14 that before or after he was given his Miranda rights,
15 the right to remain silent, et cetera or was it both?

16 A. I believe that was afterward. He was
17 given his Miranda Warnings by other detectives
18 involved in the case. Not by me.

19 Q. When you spoke to him between one --
20 Withdrawn.

21 Do you know if he was given his Miranda
22 rights about at least 8:30 and maybe again later?

23 A. I know, again, he was given his Miranda
24 warnings by other detectives who spoke to him. At
25 that point in time when they concluded their

1 interviews I believe they either took him home or let
2 him go to when he was brought back to the 4-9
3 Precinct probably 4:00 p.m. I did not advise him of
4 his Miranda warnings.

5 Q. Fact is he was in the precinct
6 continuously from 1:00 p.m. - - sorry, he meaning
7 Gregory Walker, was in the precinct from three o'clock
8 in the morning of the 24th all the way through to
9 10:30 p.m. at least when that last statement, written
10 statement was given; isn't that correct?

11 A. No, sir.

12 Q. He was not in the precinct continuously?

13 A. No, sir.

14 Q. Was he in the precinct continuously from
15 1:00 p.m. until 10:30?

16 A. That is correct.

17 Q. P.m?

18 A. Yes, sir.

19 Q. Did you know that he -- did you ever see
20 him out of the precinct?

21 A. I was in the 4-9 Precinct when the other
22 detectives went to his resident, brought back to the
23 4-9 Precinct.

24 Q. What time was that?

25 A. Approximately 1:00 p.m.

1 Q. 1:00 p.m?

2 A. Yes.

3 Q. Do you know what time he left the 49th
4 Precinct?

5 A. No, sir. I do not.

6 Q. Now, do you know that --

7 Were you aware at the time that he had
8 given other written statements to other detectives
9 before he was brought back to the precinct at 1:00
10 p.m?

11 A. I was aware he made statements. As to
12 what he had said in the statements I was not aware of
13 that.

14 Q. The contents. You know he did make
15 statements to detectives and after those statements
16 were made he was released; correct?

17 A. Yes, sir.

18 Q. And then at some point when he came back
19 or he was brought back to the precinct that is when
20 you began to periodically speak to him between one and
21 10:30 p.m; is that right?

22 A. Yes, sir.

23 Q. Now, I know I asked you this before. I
24 don't know if I heard your answer. When you said he
25 appeared scared, I asked you if that was before or

1 after the Miranda rights.

2 Did you say he appeared scared after he
3 was given his Miranda rights?

4 A. Well, he was nervous and scared the whole
5 time I was interviewing him, speaking to him.

6 Q. That is my question. I asked you
7 something about before and after. Did he appear to be
8 scared, the same level of fear the whole time or did
9 it change before and after the Miranda rights were
10 given to him?

11 A. Again, I was present during the initial
12 interviews. I was not present when his Miranda
13 warnings was given to him. I was only present during
14 the time I spoke to him at 1:00 p.m until 10:30 that
15 night.

16 Q. When you indicated to him you would
17 relocate him if required. The fact is he was not
18 relocated with the help of the New York City Police
19 Department was he?

20 A. Not with the help of the New York City
21 Police Department. No, sir.

22 Q. Was he relocated with the help of the
23 D.A's office?

24 A. I don't believe so.

25 Q. In fact after he was released - -

1 released. After he left of the precinct, before you
2 got involved he was brought back with the detectives
3 around one o'clock; correct.

4 A. Yes, sir.

5 Q. And he was released sometime, when I say
6 released, I don't mean released, you had never held
7 him against his will; was he?

8 A. No, sir.

9 Q. After he left the precinct sometime after
10 10:30 p.m he was again back in the precinct a couple
11 of days later to view this lineup; correct?

12 A. Yes, sir.

13 Q. And he did that voluntarily?

14 A. I contacted him by phone. Told him I
15 requested his presence at the 4-9 Precinct detective
16 squad.

17 Q. Arrangements were made to pick him up or
18 come to the 49th Precinct?

19 A. He came to the precinct voluntarily.

20 Q. Sometime later went he testified in the
21 grand jury I think the next day on September 27th, are
22 you aware of that?

23 A. I don't recall that, sir.

24 Q. At no time in any of your contact with Mr.
25 Walker did he ever ask to be relocated; did he?

1 A. He --

2 Q. Even after you had offered it?

3 A. No. He did bring it up to me during the
4 course of our conversation.

5 Q. When was that?

6 A. On the September 24th.

7 Q. When he brought it up to you you said you
8 would see what arrangements could be made; is that
9 correct?

10 A. That's correct.

11 Q. After it was brought up on the 24th were
12 any arrangements made to relocate Mr. Walker?

13 A. No, sir.

14 Q. And after the 24th, very first time when
15 he was in the precinct, any time after the 24th until
16 this trial were any efforts made to relocate him?

17 A. No, sir. Not to my knowledge.

18 Q. Now, I think you said when Mr. Piacentile
19 asked you what prompted the Miranda rights you said
20 because of the statements that Mr. Walker made with
21 regard to stolen cars; correct?

22 A. That is correct.

23 Q. Now, the Miranda rights are given when
24 someone is a suspect in a potential crime or crimes;
25 correct?

1 A. That is correct.

2 Q. And you give him his rights so he wouldn't
3 say anything that could incriminate himself; is that
4 correct?

5 A. That is correct.

6 Q. And the fact is, after Mr. Walker was
7 given his Miranda rights he did make statements
8 indicating his knowledge, his involvement and his
9 complicity in stealing a number of different cars;
10 correct?

11 A. I honestly don't recall.

12 Q. Didn't he admit to being involved in the
13 stolen car that the deceased was found in?

14 A. Yes. That he did.

15 Q. That it was at least one stolen car; is
16 that correct?

17 A. Yes, sir. That's correct.

18 Q. Now, also --,

19 MR. SCHNEIDER: May I approach the
20 witness, your Honor.

21 THE COURT: Sure. We have an officer.

22 MR. SCHNEIDER: Officer would you hand
23 that to the witness.

24 COURT OFFICER: (Handing exhibit to the
25 witness.)

1 Q. That document, have you ever seen that
2 document before?

3 A. No, sir. I have not.

4 Q. That is not your handwriting?

5 A. No, sir.

6 Q. That is the document, that is handwriting
7 of Gregory Walker; is it not?

8 A. I believe so.

9 Q. You believe so because it the statement
10 that he gave to you at 10:30 p.m?

11 A. I would have to look at both statements at
12 the same time.

13 MR. SCHNEIDER: Okay.

14 COURT OFFICER: (Handing exhibit to the
15 witness.)

16 MR. PIACENTILE: I object to the whole
17 line of questioning unless the detective's
18 expertise as a handwriting analyst can be
19 established.

20 A. No.

21 THE COURT: No, overruled. Allow it.

22 Q. You are not an expert in handwriting?

23 A. No, sir. I'm not.

24 Q. In your every day knowledge as a
25 detective--

1 THE COURT: Does it look similar to
2 you?

3 THE WITNESS: It appears to be written
4 by Gregory Walker.

5 THE COURT: Says it looks like it.

6 MR. SCHNEIDER: Thank you.

7 Q. Is it fair to say in your questioning of
8 Mr. Walker at about 10:30 or so before he wrote out
9 this statement there was some oral statements that he
10 made; correct?

11 A. That is correct.

12 Q. And you asked him to put it in writing in
13 his own handwriting?

14 A. Yes, sir.

15 Q. Is it fair to say that before that 10:30
16 p.m statement was made and after his Miranda rights
17 were given he told either you or other detectives that
18 he was involved in at least - - that he was involved
19 with backing up Mike Ledeatte on at least five
20 occasions for stolen cars; is that correct, sir?

21 A. If I can explain to you for one second.

22 Q. Sure.

23 A. My involvement with this case was strictly
24 for the purpose of solving this homicide. To be
25 honest with you, I was not interested in any motor

1 vehicles that Gregory Walker had stolen whether in the
2 present or past. My involvement was pertaining to
3 this homicide investigation.

4 Q. If you are focusing on a homicide, is it
5 still your job or other police officers or our
6 detectives jobs to try to solve other crimes?

7 MR. PIACENTILE: Objection.

8 Q. If they happen to fall in your lap.

9 THE COURT: Sustained.

10 MR. PIACENTILE: Okay.

11 THE COURT: Sustained.

12 Q. My question is, to your knowledge whether
13 it is for one stolen car or any number of stolen cars,
14 was Gregory Walker ever charged after he was given his
15 Miranda rights with stealing any cars?

16 MR. PIACENTILE: Objection.

17 THE COURT: Overruled. I will allow
18 it.

19 As far as you know was he charged with
20 stealing cars?

21 THE WITNESS: No, sir.

22 MR. SCHNEIDER: May I have those back.

23 COURT OFFICER: (Handing exhibit to
24 Counsel.)

25 MR. SCHNEIDER: Thank you.

1 Q. Now, you said there was some efforts made
2 by detectives to locate Antonio Mallet; isn't that
3 correct?

4 A. That's correct.

5 Q. You said some of those detectives went to
6 a place call Alpine Motors; correct?

7 A. Yes.

8 Q. Did they go to other car locations other
9 than Alpine Motors looking for Mr. Mallet?

10 A. I believe they did.

11 Q. They went to a number, as far as you know,
12 at least two or three along a strip looking for
13 someone named Antonio Mallet; isn't that right?

14 A. No. Again, my information from speaking
15 to the witnesses, the witness only knew this
16 individual as Cilo. As far as going to places and
17 looking for Antonio Mallet, no, sir.

18 Q. Sorry. Before when you said efforts were
19 made to reach Antonio Mallet, it turned out you were
20 looking for someone named Cilo; correct?

21 A. Cilo, that's correct.

22 Q. When the detectives went to location to
23 try to find this person named Cilo they went to more
24 than one location. They didn't just get to Alpine;
25 didn't they?

1 A. They went to several locations.

2 Q. They went to several car locations in the
3 Bronx; correct?

4 A. That is correct.

5 Q. And did they leave, do you know, either
6 their card, or there name or number to be contacted?

7 MR. PIACENTILE: Objection.

8 THE COURT: Yes. I sustain the
9 objection. What you are asking him, it is all
10 hearsay.

11 MR. SCHNEIDER: I will move on.

12 THE COURT: I assume they did. The
13 jury will assume the same thing. They did their
14 job.

15 They are trying to locate the
16 individual; right?

17 THE WITNESS: Yes, sir.

18 Q. Now, at some point you said that there was
19 a conversation from a United States marshal to the
20 precinct first; correct?

21 A. Yes, sir.

22 Q. And the detectives in the precinct were
23 informed that Antonio Mallet was prepared to come in
24 to the precinct; correct?

25 A. Again, the conversation I do not have the

1 conversation with the U.S. Marshal.

2 Q. Because at the time there was a Detective
3 Nieves who was really in charge of the investigate;
4 correct?

5 A. It was his homicide investigation.

6 Q. We'll, you were involved. He was the one
7 who was doing a lot of the leg work and investigation,
8 whatever; correct?

9 A. Yes, sir.

10 Q. Is it fair to say some detective had had a
11 conversation with a U.S. Marshal where you came to
12 learn that Antonio Mallet volunteered, agreed to
13 surrender to the precinct the very next day; correct?

14 A. Well, again I know arrangements were made
15 through the United States Marshal Service to have
16 Antonio Mallet surrender to the 4-9 Precinct on
17 September 26th.

18 Q. When you say arrangements were made by the
19 marshall service, one particular marshal spoke at the
20 time said I know Antonio Mallet and he will come in
21 tomorrow; correct?

22 A. Stated, information I got was that he
23 would contact Antonio Mallet and make arrangements for
24 him to surrender to that precinct.

25 Q. And that was on September 25th; correct?

1 A. Yes, sir.

2 Q. And then, there was an agreement between
3 the marshal and a detective that on the 26th in the
4 morning or early afternoon, eleven, twelve, one
5 o'clock Antonio Mallet would come to the precinct;
6 correct?

7 MR. PIACENTILE: Objection.

8 THE COURT: I sustain the objection.

9 We heard it ten times already. He surrendered
10 the next day, the 26th.

11 Q. Did he surrender on his own by himself?

12 THE COURT: I sustain the objection,
13 counsel.

14 MR. SCHNEIDER: Your Honor.

15 THE COURT: He walked in by himself.
16 Is what he said.

17 MR. SCHNEIDER: Fine. Thank you.

18 Nothing else.

19 THE COURT: Anything further.

20 MR. PIACENTILE: Just one or two.

21 THE COURT: All right.

22 REDIRECT EXAMINATION

23 BY MR. PIACENTILE:

24 Q. Detective Tracy, did you know for a fact
25 whether Gregory Walker is being relocated by the

1 District Attorney's Office?

2 A. No, I do not.

3 Q. Do you know whether Gregory Walker
4 relocated himself during the course of the events in
5 question from September the 24th, 1996, to the
6 present?

7 A. Yes, he did.

8 Q. You began to speak to Gregory Walker about
9 one o'clock in the afternoon; correct?

10 A. That's correct.

11 Q. And your conversations with him ceased
12 around 10:30 in the evening; correct?

13 A. That is correct.

14 Q. His fear or apprehension level did it
15 increase from one o'clock to 10:30? Did it remain the
16 same?

17 A. More time I spent with him his fears
18 decreased.

19 MR. PIACENTILE: Thank you. No further
20 questions.

21 RECROSS EXAMINATION

22 BY MR. SCHNEIDER:

23 Q. When you say Gregory Walker since, at some
24 point has relocated either on his own, he changed
25 addresses; right. He moved?

1 A. He moved, yes.

2 Q. He did not change his name; did he?

3 A. No, sir.

4 Q. When he moved did he tell any of the
5 detectives where he moved to?

6 MR. PIACENTILE: Objection.

7 THE COURT: Sustained.

8 Q. You say he was relocated. He just changed
9 addresses and some point after that you were able to
10 find him; correct?

11 A. Yes, sir.

12 Q. Now, at this 10:30, at the 10:30 p.m
13 statement, the final statement that Gregory Walker
14 gave, is it fair to say that he told you he, meaning
15 Gregory Walker, told you, Detective Gannon and
16 Detective Nieves that he observed Mike shot twice?

17 MR. PIACENTILE: Objection.

18 Q. In the head?

19 THE COURT: Sustained.

20 MR. SCHNEIDER: Your Honor, there is
21 inconsistency.

22 THE COURT: You have already asked it.
23 He told you he never told him he was shot twice.
24 The statement is in evidence; is it.

25 MR. SCHNEIDER: No.

1 THE COURT: It is not.

2 MR. PIACENTILE: No.

3 THE COURT: All right. I will allow
4 it. Overruled.

5 MR. PIACENTILE: If I may.

6 THE COURT, no overruled.

7 MR. PIACENTILE: It is not
8 inconsistent.

9 THE COURT: That is an argument you
10 make to the jury, not to me. I overruled the
11 objection.

12 Q. Is it fair to say that Gregory Walker told
13 you that Mike was shot twice in the head?

14 THE COURT: It is not in evidence. I
15 am certain, this jury's recollection controls
16 here, right, your recollection. It is in the
17 record. If you have any misgivings about it, not
18 me, my recollection is clear.

19 When Mr. Walker was on stand he
20 indicated that his statement that he had written
21 twice he told the jury how that came about.

22 MR. SCHNEIDER: Then I have nothing
23 further.

24 THE COURT: That is it in evidence.

25 MR. PIACENTILE: It the basis of my

1 objection.

2 MR. SCHNEIDER: Nothing further. That
3 is fine.

4 THE COURT: Never told him he was shot
5 twice?

6 THE WITNESS: No, sir.

7 THE COURT: Did you knows this fellow
8 had two holes in his head?

9 THE WITNESS: I was just aware he had a
10 gunshot wound to the head.

11 THE COURT: Thank you.

12 MR. PIACENTILE: No further questions.

13 THE COURT: You may step down?

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 THE COURT: Next witness.

17 MR. PIACENTILE: We call Officer
18 Giuliano.

19 P.O. J-a-m-e-s G-i-u-l-i-a-n-o - having been called
20 as a witness by and on behalf of the People
21 in this case, after first being duly sworn,
22 testified as follows:

23 COURT OFFICER: State your first and
24 your last name.

25 THE WITNESS: Name is Police Officer

1 James Giuliano, G-I-U-L-I-A-N-O.

2 COURT OFFICER: Shield number.

3 THE WITNESS: 230.

4 COURT OFFICER: Your command.

5 THE WITNESS: Bronx task force.

6 THE COURT: You are no relation to the
7 current mayor of the city?

8 THE WITNESS: No.

9 THE COURT: Your name ends end in "O"
10 not "I".

11 THE WITNESS: Yes.

12 THE COURT: Proceed.

13 DIRECT EXAMINATION

14 BY MR. PIACENTILE:

15 Q. Good afternoon. How long have you been a
16 police officer?

17 A. Almost ten years.

18 Q. Back on September 24th, 1996, at about
19 2:30 to 2:40 in the morning were you working as a
20 police officer?

21 A. Yes, I was.

22 Q. Where were you assigned?

23 A. I was assigned to the 4-9 Precinct.

24 Q. Is 1750 East Gun Hill Road, more
25 specifically the Waldbaum's Supermarket located there

1 at that time? Did that fall within the confines of
2 the 49th Precinct?

3 A. Yes, it does.

4 Q. Were you called to the rear of that
5 Waldbaum's during the course of your tour of duty on
6 the early morning of September 24th, 1996?

7 A. Yes, I was.

8 Q. Were you alone or with someone else?

9 A. I was with a partner.

10 Q. Who?

11 A. Police Officer Timothy D'Heedene.

12 Q. He is now Sergeant D'Heedene?

13 A. Yes.

14 Q. You two fellows on foot or car?

15 A. In a car.

16 Q. Was it a marked car or unmarked car?

17 A. A marked car.

18 Q. Marked?

19 A. Yes, sir.

20 Q. Were you in uniform much the same as you
21 are today?

22 A. Yes, sir.

23 Q. Did there come a point in time you were
24 called to the rear of that Waldbaum's Supermarket?

25 A. Yes. Sir.

1 Q. About what time did you get to the rear of
2 the Waldbaum's Supermarket?

3 A. Approximately 2:40 in the morning.

4 Q. When you got back there what, if anything,
5 did you see?

6 A. I saw there was a black Lexus at the
7 location. There was a male black, in the vehicle
8 driver's seat slumped over with. An apparent gunshot
9 to the side of his head.

10 Q. And during the course of that morning did
11 you come to meet someone that you later learned was
12 Gregory Walker?

13 A. Yes.

14 Q. When for the first time did you encounter
15 Gregory Walker?

16 A. When I arrived at the scene. Maybe thirty
17 seconds when I got to the back, rear of the location.

18 Q. And under what circumstances did you first
19 encounter Gregory Walker?

20 A. I encountered him when I arrived at the
21 scene for the male shot in the black Lexus.

22 THE COURT: Did he come up to you? Did
23 you see him?

24 THE WITNESS: Yes. He was in the rear
25 of the location standing not too far from the

1 black Lexus.

2 THE COURT: Tell that to the jury.

3 Q. And did he walk up to you? Did you walk
4 over to him? Do you recall?

5 A. I don't recall if I walked up to him or he
6 walked up to me. I remember speaking to him.

7 Q. So, he -- withdrawn.

8 Just yes or no, at that time did you have
9 a conversation with Mr. Walker?

10 A. Yes, I did.

11 Q. Do you recall approximately how long that
12 conversation lasted?

13 A. Approximately a minute.

14 Q. And do you know -- well did you remain at
15 that location for a period of time after this
16 conversation with Mr. Walker?

17 A. Yes, I did.

18 Q. Do you know whether or not Mr. Walker
19 remained at that location after your brief
20 conversation with him?

21 A. Yes, he was still there.

22 Q. To the best of your recollection was --
23 were you and sergeant D'Heedene the first officers on
24 the scene?

25 A. We responded there. Just at the same time

1 as another unit. We were like the first responding
2 officers.

3 Q. So there was another unit there at that
4 time?

5 A. Yes.

6 Q. How long did it take you -- well what was
7 it that first through your attention to that location?

8 A. We received a call from -- for male shot
9 at the rear of Waldbaum's. We were patrolling in that
10 vicinity. We responded to that location.

11 Q. What kind of call are you referring to?

12 A. I got a radio call to respond to the rear
13 of Waldbaum's for a male shot -- no. Excuse me. A
14 person shot.

15 Q. How long did it take you from the time
16 that you received that radio message to respond to the
17 rear of Waldbaum's?

18 A. Approximately two minutes.

19 Q. When you got there did you go directly to
20 the rear of the Waldbaum's or did you stop in front
21 for any purpose?

22 A. I went directly to the rear.

23 MR. PIACENTILE: No further questions.

24 Thank you.

25 CROSS EXAMINATION

1 BY MR. SCHNEIDER:

2 Q. Just a few if I may. Good afternoon,
3 Officer.

4 A. Good afternoon.

5 Q. When you received that call back on the
6 24th, did you respond back over the radio?

7 A. I think I gave an 84. That is officers on
8 the scene.

9 Q. Did you at any point when you initially
10 heard the location 1750 Gun Hill behind Waldbaum's,
11 did you respond that we're right around the corner.
12 We didn't hear any shots. Did you say that?

13 A. No. That wasn't me.

14 Q. Sorry?

15 A. No, sir.

16 Q. Was it your partner?

17 A. No, sir.

18 Q. Did you hear that come over that radio,
19 that conversation?

20 A. Yes.

21 Q. Who did that - - did you hear anybody
22 identify that voice who you heard at the scene, we're
23 right around the corner. We didn't hear any shots.
24 Do you know which officer said that?

25 A. I think that was the crime, the crime

1 officers.

2 Q. What does that mean, crime officers?

3 A. The police officers that were performing
4 anti-crime. That is there assignment.

5 MR. PIACENTILE: Can I have a moment
6 with counsel?

7 THE COURT: Yes.

8 (Whereupon, there is a short pause
9 in the proceedings.)

10 Q. Now, at some point after the - - after you
11 were at the scene did you speak to a Detective Vigo,
12 V-I-G-O.

13 A. I remember speaking to a detective. I'm
14 not sure who I spoke to.

15 Q. Okay. Is it fair to say though that as
16 being the first officers on the scene or at least one
17 of the first two cars on the scene it is your job to
18 speak to a detective who is ultimately going to be
19 involved in the investigation?

20 A. Yes.

21 Q. And you have to tell that detective he or
22 she whatever you saw, heard and did; correct?

23 A. Correct.

24 Q. Do you remember without the name of the
25 detective, but remember speaking to a detective and

1 telling that detective that you were on patrol on
2 Wickham and Mace when you heard the call of the male
3 shot at the location. Did you tell that to a
4 detective?

5 A. I remember speaking to the detective. I
6 don't remember if I gave that exact location, but I
7 told him we responding to the job. We were in close
8 proximity to that location.

9 THE COURT: Would that be consistent
10 with being in the proximity of Wickham and Mace?

11 THE WITNESS: Yes, your Honor.

12 Q. Wickham and Mace is right there right
13 behind Waldbaum's where this lane is; correct?

14 A. Very close to Waldbaum's, yes.

15 MR. SCHNEIDER: I have nothing else.

16 Thank you officer.

17 REDIRECT EXAMINATION

18 BY MR. PIACENTILE:

19 Q. Officer, you were this close to a clean
20 getaway?

21 A. Excuse me.

22 Q. You were this close to a clean get away?

23 THE COURT: He is almost that close
24 right now. So be careful.

25 Q. Do you know, do you know where you were at

1 the precise moment that the gunshot was fired that was
2 the basis of the call?

3 THE COURT: I sustain the objection.
4 There is no way in the world that question could
5 be answered.

6 MR. PIACENTILE: That is my point.
7 Thank you.

8 THE COURT: Why did you ask the
9 question. You may step down, Officer.

10 THE WITNESS: Thank you, your Honor.
11 (Witness is excused.)

12 THE COURT: If he did not hear the shot
13 how could he know where he was when notified. If
14 a tree falls in the wood there's nobody there to
15 hear it. Does it make a sound?

16 MR. PIACENTILE: Philosophers would
17 debate. I agree with your Honor.

18 THE COURT: We have a stipulations that
19 you agreed upon.

20 MR. PIACENTILE: Yes.

21 THE COURT: Thank you. Do you want to
22 articulate them.

23 MR. PIACENTILE: Your Honor, counsel
24 and I have agreed that should Detective Tony Tota
25 be called to testify with respect, he is a police

1 ballistics expert and that he examined the
2 fragments that were recovered at the location and
3 from the body of the deceased and that the
4 fragments were too small to be compared and were
5 of no evidentiary value in terms of the
6 investigation in this case. That is the first
7 stipulation.

8 With respect to the second stipulation,
9 we would stipulate and agree that if Officer John
10 Bucci were called to testify, he would state, he
11 would state what he recovered from the deceased
12 in this case and vouchered by him was one yellow
13 colored neck chain and one yellow and silver
14 colored panther charm and also recovered from the
15 deceased in this case was a Motorola beeper. If
16 he were called to testify that is what we agreed
17 he would testify to.

18 THE COURT: We are done.

19 MR. PIACENTILE: One more witness.

20 THE COURT: We are done. You are
21 welcome to join us. We are done.

22 MR. PIACENTILE: One additional
23 witness.

24 THE COURT: All right. I am wrong.

25 MR. PIACENTILE: You were perhaps

1 misinformed. They were wrong.

2 THE COURT: Did you understand the two
3 stipulations.

4 In order to save time they are in
5 agreement if a ballistics expert had come in he
6 would have testified that he examined those
7 fragments of a bullet recovered during the
8 autopsy and they were of no value. They would
9 not tell what caliber they were or what gun, et
10 cetera.

11 MR. PIACENTILE: There is also a
12 fragment testified to.

13 THE COURT: At the scene.

14 MR. PIACENTILE: At the scene. All
15 three were compared. No value.

16 THE COURT: All right. The other
17 stipulation is he had a gold chain or yellow
18 chain.

19 (Transcript continued on next page. . .)

20

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25

There is no page 356.

1 Peters-Peo-Direct

2 MR. PIACENTILE: Some kind of a gold
3 chain and a beeper.

4 MR. SCHNEIDER: Yellow chain.

5 THE COURT: Yellow chain, perhaps
6 gold. It was still found around his
7 around his neck at the time and also a
8 charm and one other item?

9 MR. PIACENTILE: A Motorola beeper.

10 THE COURT: So that's evidence in
11 the case.

12 Now you have another witness.

13 MR. PIACENTILE: Yes.

14 THE COURT: Another witness?

15 MR. PIACENTILE: Officer Peters.

16 P O L I C E O F F I C E R J O S E P H

17 P E T E R S, shield number 21535, 49

18 Precinct, a witness called by and on

19 behalf of the People, having been first

20 duly sworn, testified as follows:

21 THE COURT: All right, proceed.

22 DIRECT EXAMINATION

23 BY MR. PIACENTILE:

24 Q Good morning.

25 Please keep your voice raised so

1 Peters-Peo-Direct

2 everyone can hear you?

3 A No problem. Is that good enough?

4 Q Louder.

5 A Is that good?

6 Q Better.

7 A Thank you.

8 Q How long have you been a member of the
9 Police Department?

10 A It will be 11 years this July.

11 Q Were you working on the early morning of
12 September the 24, 1996 as a police officer?

13 A Yes, I was.

14 Q Where were you assigned?

15 A Assigned to the 49 Precinct.

16 Q Now, were you alone or with someone else?

17 A I was with other people.

18 Q Who?

19 A I was with an Officer Tomasini and a
20 Sergeant Looney.

21 Q And, were you fellows in uniform or
22 plainclothes?

23 A We work in plainclothes.

24 Q Were you on foot or in a car?

25 A In a car.

Peters-Peo-Direct

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Q And, was that a marked or unmarked car?

A Unmarked.

Q Now, did there come a time early in the morning, September the 24, 1996 that your attention was drawn to the area of the Waldbaums Supermarket located at 1750 East Gun Hill Road within the confines of the 49 police precinct?

A Yes.

Q Tell the jury what it was that drew your attention first to that Waldbaums.

A Approximately 2:38 a.m. there was a call put out there for a possibly a man shot or a shooting in the parking lot of the Waldbaum supermarket.

Q What happened? What did you do in response to receiving that call?

A We immediately responded to that location.

Q How long did it take you to get from wherever you were when you received that call to get to the Waldbaums?

A Approximately one to two minutes.

Q Do you recall where you were when you received that call around 2:38 in the morning?

Peters-Peo-Direct

1
2 A We were driving around somewhere in the
3 streets, approximately four to five blocks behind
4 the Waldbaums area.

5 Q Now, when you got to the Waldbaums, what
6 did you do?

7 A We responded in the front entrance into
8 the Waldbaums into the parking lot. We didn't see
9 anything unusual in the front of the parking lot so
10 we drove around to the rear of the store.

11 Q All right.

12 MR. PIACENTILE: The record should
13 reflect that People's 11 is being handed
14 up to the witness.

15 THE COURT: Why don't you put it on
16 the ledge, this way the jury can see it.

17 Q Officer Peters, you have seen that
18 diagram before?

19 A Yes, I have.

20 Q All right. What is that a diagram of?

21 A That's a diagram of the rear corner and
22 rear of Waldbaums supermarket.

23 Q You say that you went around the back of
24 the Waldbaums, is that correct?

25 A Yes.

1 Peters-Peo-Direct

2 Q I am going to give you a laser pointer.
3 Show the jury on the diagram the direction from
4 which you and your brother officers came to reach
5 the rear of the Waldbaums?

6 A Came down this side entrance and around
7 the back this way.

8 MR. PIACENTILE: The record should
9 reflect that he illuminated the left-hand
10 side of the diagram up where the "N" is,
11 pointing, came down and brought it to the
12 right.

13 Q Now, when you got to the back of the
14 Waldbaums, what did you see?

15 A I saw a black vehicle with both the front
16 passenger, I mean the front driver and the front
17 passenger door wide open.

18 Q Where were you when you first made that
19 observation?

20 A I was just rounding the corner, I took
21 the corner a little wide, sort of like this, when I
22 got to about here I could see the car parked in
23 like a loading bay.

24 Q How far were you from that vehicle when
25 you were first able to observe it?

1 Peters-Peo-Direct

2 A I guess it's approximately 70 feet.

3 Q And, did you ultimately approach that
4 vehicle?

5 A Yes, I did.

6 Q Well, what did you see when you got up
7 close to the vehicle?

8 A When I got up closer to the vehicle I
9 could see through the driver's side door which was
10 wide open, a male black hunched over sort of to his
11 right and forward in the front driver's seat of the
12 car.

13 Q Did you have a chance at that time to
14 make an observation about his condition?

15 A Yeah. When I got out of the car I
16 approached him on foot, I could see he was bleeding
17 profusely from his head, blood dripping from the
18 side of his head down his shoulder down onto the
19 car seats.

20 Q And, was he moving at all?

21 A He was sort of twitching, shaking a
22 little, I couldn't call it convulsing, twitching
23 really fast. He was leaned over sort of over the
24 arm right to the right and forward, his hand was
25 extended out to the right and he had a large pair

1 Peters-Peo-Direct

2 of pliers in his hand.

3 Q Can you describe those pliers with any
4 specificity?

5 A They were about eight inches long, they
6 had blue rubber type handles on them. They were
7 the needlenose type pliers, but they were unusually
8 long for needlenose pliers.

9 Q I ask that People's 12 be shown to the
10 witness.

11 A These are them.

12 Q You now have in your hands People's 12.
13 Do you recognize what the item is that's packaged
14 in that see-thru package container?

15 A Yes, I do.

16 Q What is that?

17 A They are the pliers that were in his
18 right-hand.

19 MR. PIACENTILE: I am going to ask
20 that those pliers which have been marked
21 for identification purposes be received
22 in evidence.

23 THE COURT: Any objection?

24 MR. SCHNEIDER: No, sir.

25 THE COURT: They will be received.

Peters-Peo-Direct

(Pliers is received and marked as
People's Exhibit 12 in evidence.)

Q Did you try to render any aid to the
fellow in the car?

A No, I did not.

Q Did you call for help?

A Yes, we requested an ambulance respond
forthwith which means as soon as possible.

Q What were the lighting conditions in the
back of the Waldbaums?

A They were lights on the walls and in the
loading bay, in the loading bay of the area, you
could see.

Q To be fair was it dark or was it light?

A Darker than this room but you could see.

Q Now, are you familiar with the rear of
that Waldbaums?

A Yes, I am.

Q Is there a dumpster located behind that
Waldbaums somewhere?

A Yes, there is.

Q Where was the dumpster in relation to the
car, the black Lexus?

A The dumpster is not in this diagram, but

1 Peters-Peo-Direct

2 it would be off to the right off somewhere here.

3 Q Indicating to the right of that green
4 dot?

5 A Yes.

6 Q How far, approximately, is that dumpster
7 from the Lexus, where the Lexus was?

8 A Maybe 150 feet.

9 Q And, that night from where -- well,
10 withdrawn.

11 You obviously at one point stood by
12 the Lexus, correct?

13 A Yes.

14 Q From that point where you were standing
15 by the Lexus were you able to look down the
16 building line and see the dumpster?

17 A You could see the dumpster.

18 Q How much blood was there on the interior
19 of this vehicle?

20 A Quite a lot, it was pouring out. When I
21 got closer it was pouring out of both the left and
22 right side of his head, running down his body,
23 substantial amount covered the arm rest and the
24 passenger seat, both on the back part and the seat
25 area. There was blood pouring down the front of

1 Peters-Peo-Direct

2 his shirt and onto the seat that he was sitting on.

3 MR. PIACENTILE: Your Honor, I am
4 going to ask that People's Exhibit 8 and
5 9 for identification be shown to the
6 witness.

7 THE COURT: Show them to the
8 witness.

9 Q You are holding in your hands two
10 photographs, are you not?

11 A Yes, I am.

12 Q Do you recognize what those are
13 photographs of?

14 A Yes, I do.

15 Q What do you recognize those to be
16 photographs of?

17 A These are the interior of the black auto
18 that the male was found in.

19 Q Do those photographs fairly and
20 accurately portray the quantity of blood that you
21 observed inside the Lexus at the time that you were
22 dealing with it behind the Waldbaums?

23 A Yes, they do.

24 MR. PIACENTILE: Your Honor, at this
25 time I am going to ask that 8 and 9 be

1 Peters-Peo-Direct

2 received in evidence.

3 MR. SCHNEIDER: Objection.

4 THE COURT: I will sustain an
5 objection.

6 MR. PIACENTILE: May I be heard?

7 THE COURT: No, we will do that in
8 the absence of the jury.

9 MR. PIACENTILE: Fine.

10 THE COURT: If I decide to let them
11 in I will tell the jury tomorrow that
12 they are in evidence.

13 There's a lot of blood there so I
14 don't know what the relevancy of that may
15 be. We will discuss it.

16 MR. PIACENTILE: That's the argument
17 I wish to make.

18 THE COURT: Sure.

19 Q Were the lighting conditions that early
20 morning better by the Lexus or better by the
21 dumpster?

22 A Better by the Lexus.

23 MR. PIACENTILE: Thank you.

24 I have no further questions.

25 MR. SCHNEIDER: No questions.

1 Proceedings

2 THE COURT: You may step down.

3 Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: And, now, Mr.

6 Piacentile?

7 MR. PIACENTILE: I have run out of
8 witnesses. We have reached a rubicon.

9 THE COURT: No, we haven't.

10 Is that the People's case?

11 MR. PIACENTILE: Yes.

12 THE COURT: That's not a rubicon,
13 that's a milestone.

14 MR. PIACENTILE: Thank you.

15 THE COURT: Is the defense ready to
16 go forward?

17 MR. SCHNEIDER: Motions, Judge.

18 THE COURT: We will reserve
19 motions.

20 MR. SCHNEIDER: We rest.

21 THE COURT: Defense rests.

22 People rest?

23 MR. PIACENTILE: Yes.

24 THE COURT: Ladies and gentlemen of
25 the jury, both sides have rested which

Proceedings

indicates that that is all the evidence that you are going to hear in this case.

What remains to be done now are for the lawyers to have an opportunity to sum up to the jury. A summation is not evidence, but a summation is the right that the lawyer has to make argument to the jury as to what the facts are you should believe, what you should accept from the evidence that you have heard. If you agree with any of the arguments put forth by the lawyers in summation, feel free to adopt them. If you don't agree with them, you simply reject them because you and you alone are the ones who have to decide what the evidence indicates to you.

And, then after that the Court will explain the law to you and then you will retire up to that jury room to decide whether or not the People have proven their case beyond a reasonable doubt.

This is all going to take place tomorrow morning, first thing tomorrow

Proceedings

1 morning. I am going to ask you to come
2 in at 9:30 tomorrow morning. When you
3 come here, the officers will take your
4 luncheon order. We are going to buy you
5 lunch tomorrow because from tomorrow,
6 once you start your deliberations, you
7 must remain together as a unit until you
8 have resolved the case one way or the
9 other.
10

11 So, the officers will give you
12 further instructions with respect to
13 tomorrow. Tomorrow is the day that the
14 case goes to the jury for your
15 consideration. I thank you again for
16 having served as jurors and for your
17 continued service, for your promptness,
18 for your cooperation and ask you to do
19 the same one more day so that we can
20 finish this up for good.

21 Once again, I give you that
22 admonition, you are not to discuss the
23 case with anyone.

24 You are not to talk to each other
25 about the facts until tomorrow comes.

1 Proceedings

2 Keep an open mind.

3 You have not yet heard the lawyers
4 arguments, plus the Court's instructions
5 on the law.

6 Have a pleasant day, it's beautiful
7 out there, it's going up to 60 degrees.
8 Enjoy the rest of the day and come back
9 tomorrow at 9:30, we will finish our
10 case. That includes you, alternate
11 number one, the only alternate, you must
12 return also.

13 (Jury exits courtroom at this time.)

14 MR. PIACENTILE: May I --

15 THE COURT: The jurors having been
16 excused, I will now hear argument as to
17 the admissability of People's 8 and 9
18 which we have had some previous
19 discussions about.

20 MR. PIACENTILE: Yes, your Honor.
21 Does the Court wish to see the photos?

22 THE COURT: No, I am familiar with
23 them.

24 MR. PIACENTILE: Your Honor, during
25 the cross-examination of the eyewitness

Proceedings

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2 defense raised the point with the
3 eyewitness to the affect that if this
4 were truly a stolen car to be delivered
5 to Mr. Mallet and once Mr. Ledeatte was
6 safely incapacitated it would have been
7 the easiest thing in the world just to
8 steal the car as if that was some proof
9 of the fact that Mr. Mallet had done
10 this, that it was inconsistent with his
11 having done this.

12 I feel that, first of all, I think
13 the photos come in, I don't think they
14 are overly gruesome.

15 THE COURT: Court is in agreement,
16 prejudice has nothing to do with it,
17 there's no body in the photos.

18 MR. PIACENTILE: The probative value
19 is what I wish to address. The photos
20 are probative on a number of issues.
21 They do confirm, I believe, what the,
22 what the eyewitness's account of the
23 action of the body after it had been shot
24 was. I can make argument from the blood,
25 especially the blood that's on the

Proceedings

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2 passenger side, but also with respect to
3 the arguments that counsel seemed to be
4 raising with the witness that why don't
5 you just steal the car if -- pull the guy
6 out of the car and drive away with it. I
7 think it's one thing for the jury to hear
8 there was some blood in the car, it's
9 another thing for them to see that so
10 they can understand if I have to stand up
11 there and make an argument that there's a
12 reason why this car stayed there, not
13 only did it have a dead body in it that
14 once removed you couldn't get away with a
15 pristine car. It's one thing to be
16 caught in a Lexus that's reported stolen,
17 it's quite a different thing to be caught
18 in a Lexus reported stolen with all this
19 blood all over the inside of the car.

20 THE COURT: I have the argument.

21 Thank you.

22 MR. PIACENTILE: That's my argument.

23 MR. SCHNEIDER: Need I respond?

24 THE COURT: Sure.

25 MR. SCHNEIDER: Okay.

Proceedings

THE COURT: You have an opportunity to respond, if you so desire.

MR. SCHNEIDER: Number one, I specifically did not object when the witnesses talked about there being excessive amounts of blood so that the argument could be made by Mr. Piacentile if he wanted to. Because we had previous discussions about these photographs, so I didn't object to the statements of the blood, number one.

Number two, the fact that there's blood there hours after the shooting just indicates that he was sitting there bleeding periodically. So the amount of blood that was there when the pictures were taken is not necessarily going to be indicative of what Mr. Piacentile wants to argue that at the moment of the shooting the place was all full of blood automatically.

For those two reasons, there's really been no attack of the quote witness's credibility regarding the fact

1 Proceedings

2 that he did see the dead body there,
3 that's really beyond dispute. So I don't
4 see how these pictures add to the
5 admissability.

6 THE COURT: May I see the photos? I
7 want to see the photos.

8 MR. PIACENTILE: The testimony in
9 the case is that that body was removed
10 from that vehicle within minutes by
11 E.M.S. so it's not a fair statement to
12 say, there's nothing in the case to
13 indicate that that's the state of the car
14 after the body has been in the car for
15 hours.

16 THE COURT: Mr. Piacentile, I have
17 heard it, I have heard it.

18 MR. PIACENTILE: All right.

19 THE COURT: Thank you.

20 All right, let the record reflect
21 that the Court has, once again, examined
22 these photographs. As I indicated during
23 the arguments made by counsel there is
24 absolutely nothing in my opinion
25 prejudicial about these photographs. So

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2 the reason to keep them out would not be
3 because of the extreme prejudice that
4 would flow therefrom. The deceased is
5 not in these pictures and there's an
6 amount of blood on the seats which
7 obviously came from the deceased by
8 virtue of the gun shot wound and from the
9 testimony we have heard.

10 So what's the only issue before the
11 Court? It's a question of relevancy.
12 Counsel argues that the defense is going
13 to sum up to the jury that they could
14 have taken the body of the deceased,
15 thrown it out and driven away in his
16 stolen car which would be delivered.
17 It's a nonsensical argument. If he
18 chooses to make it to the jury it's up to
19 him to make.

20 But the bottom line is there's
21 absolutely no reason to preclude the jury
22 from seeing these photographs. There's
23 absolutely no prejudice that would flow
24 therefrom. The defense here is that Mr.
25 Mallet didn't do this, so no matter how

1 Proceedings

2 much blood there is, and someone shot and
3 killed the deceased, but it wasn't your
4 client, that's your defense.

5 I am going to receive the photos
6 over objection.

7 MR. SCHNEIDER: Your Honor, if I
8 may, for the record, I do not agree with
9 the Court's assessment that they are not
10 prejudicial. While I agree there's no
11 body here, it's my feeling if it's not
12 probative in terms of Mr. Mallet's
13 identity as being the shooter, and I
14 don't believe it in any way confirms or
15 corroborates any other testimony that is
16 in question, I think to have the jurors
17 see two photographs of blood doesn't
18 really aid and could very well prejudice
19 Mr. Mallet because they could blame him.
20 It may have an unusually adverse reaction
21 on the jury to seeing blood.

22 THE COURT: That does conclude the
23 record with the following: I know you
24 say they are prejudicial, I maintain that
25 they are not, but, more importantly, I

Proceedings

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2 disagree with your assessment that they
3 don't corroborate the testimony, they
4 do. In many respects they corroborate
5 the testimony. They corroborate the
6 testimony as to the position of the
7 deceased at the time of the shooting;
8 they corroborate the testimony with
9 respect to the exit wound being on the
10 right side of his head which shows much
11 more blood on the passenger side than on
12 the side of the entry wound which makes
13 sense medically; they also corroborate
14 the testimony of several witnesses with
15 respect to the pliers that were allegedly
16 in the deceased hand at the time of the
17 shooting. Those pliers are exhibited on
18 the floor of the vehicle. So for those
19 reasons the Court feels they are
20 admissible.

21 MR. SCHNEIDER: Maybe I wasn't
22 clear. Those issues that your Honor says
23 corroborates, I agree with, those issues
24 are not in contention. We are not saying
25 that there was not an exit wound, we are

1 Proceedings

2 not saying the pliers were not found
3 where the witnesses say they found them.
4 Those issues are not in contention.

5 THE COURT: Exception to the
6 defense.

7 MR. SCHNEIDER: May I make --

8 THE COURT: I will hear your motion
9 at the end of both the People's case and
10 the entire case.

11 MR. SCHNEIDER: Your Honor, if I
12 may, while I did before the jury state
13 that the defense did rest it was implied
14 in our eye contact that I will be
15 reserving my motion at this time.

16 THE COURT: Absolutely.

17 MR. SCHNEIDER: Yes. So if I may at
18 the end of the People's case pursuant to
19 Criminal Procedure Law we are asking the
20 Court to grant a trial order of dismissal
21 in view of the fact that we believe --
22 even at that early stage we believe the
23 prosecution has not made out the case, of
24 the burden that they are required to
25 make. We believe while there is a

Proceedings

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2 question of credibility that can be left
3 to the jury, we also believe that the
4 Court does have the power, should it
5 choose to exercise it, to find as a
6 matter of law that the witness was
7 incredible. Whether you choose to
8 exercise it, that is a different issue.
9 I believe your Honor does have the power
10 to do that and given that, your Honor, we
11 are asking, based on the evidence or the
12 lack of evidence that has been proffered
13 by the prosecution in this case, we
14 believe that the prosecution has not met
15 their burden, therefore a trial order of
16 dismissal would be appropriate at this
17 stage of the proceeding.

18 THE COURT: Do you want to be
19 heard?

20 MR. PIACENTILE: Just --

21 THE COURT: You rest on the
22 evidence?

23 MR. PIACENTILE: Yes.

24 THE COURT: Thank you. Motion is
25 denied.

1 Proceedings

2 MR. SCHNEIDER: Your Honor, at the
3 end of the entire case I renew my
4 application.

5 MR. PIACENTILE: Rest on the record.

6 THE COURT: The same ruling. There
7 are clearly here questions of facts that
8 must be resolved by a jury.

9 I have a suggestion to you that the
10 Court charge one count and nothing else,
11 murder in the second degree.

12 MR. SCHNEIDER: I was about to
13 agree.. Give me one moment to check with
14 my client.

15 THE COURT: Sure.

16 (Pause in the proceedings.)

17 MR. SCHNEIDER: After consultation
18 with Mr. Mallet I am not really surprised
19 that it is our request that you charge
20 only the one count of murder in the
21 second degree, you do not charge the jury
22 as to manslaughter or the possession of
23 the weapon charge. That is our request
24 after Mr. Mallet and I have discussed the
25 possible ramifications of all the

1 Proceedings

2 possible outcomes.

3 THE COURT: People?

4 MR. PIACENTILE: I take no position,
5 rely on the discretion of the Court.

6 THE COURT: Well, all right, if you
7 do that then I will charge simply murder
8 in the second degree.

9 MR. PIACENTILE: Judge, I will tell
10 you what, if I may, I am going to request
11 that the manslaughter be charged as well
12 because I suppose there is a fair and
13 reasonable view of the evidence that
14 could support that if the jury desires.
15 I am going to ask that that be charged.

16 THE COURT: You see the danger here
17 is, and I can understand it, and that's
18 why I threw that out at you, Mr.
19 Schneider, is that the jury would
20 compromise, well, you know we don't
21 really believe the witness, we are not
22 sure he's guilty of murder so we will
23 find him guilty of manslaughter. That's
24 a danger and a risk. But, by the same
25 token there is clearly a reasonable view

Proceedings

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2 of the evidence that would support
3 manslaughter in the first degree.
4 There's only one shot, it is fired from
5 close up range, but I recall one
6 appellate court case where the defense
7 requested manslaughter in the first
8 degree, they said it was error not to
9 give it. It works both ways actually.
10 You can't get hurt where the defense
11 concedes. I am not a coward, I think
12 what is right and fair and I think that
13 manslaughter in the first degree might
14 fit in this case. I will charge
15 manslaughter in the first degree.

16 MR. SCHNEIDER: For the record it's
17 over our objection.

18 THE COURT: Yes. All right, those
19 are the two charges, murder two and man
20 one.

21 MR. SCHNEIDER: Also, I believe,
22 your Honor, I guess we should discuss the
23 charge now, if you would like.

24 THE COURT: Sure. Absolutely.

25 MR. SCHNEIDER: I believe I have to

Proceedings

1
2 formally request on the record that your
3 Honor charge the jury not to draw any
4 unfavorable inference from the fact that
5 my client did not testify. We are so
6 requesting that your Honor charge that to
7 the jury.

8 THE COURT: In response to the
9 Court's inquiry, the defense has
10 indicated that it wishes the Court to
11 instruct the jury with respect to his
12 right not to testify.

13 MR. SCHNEIDER: I am not familiar
14 with your Honor's charge so you will
15 excuse me, I don't know if your Honor's
16 charge includes language generally
17 considered the two inference charge, one
18 consistent with guilt, one consistent
19 with non-guilt, the defendant is entitled
20 to the inference of non-guilt if the
21 evidence is of equal weight.

22 THE COURT: There will be no such
23 charge.

24 MR. SCHNEIDER: I request it.

25 THE COURT: Exception.

1 Proceedings

2 MR. SCHNEIDER: I would request you
3 do it and I take exception that you not.

4 THE COURT: That charge is
5 exclusively for circumstantial evidence,
6 there's none in this case. This is an
7 eyewitness case and that charge is not
8 appropriate.

9 There is one issue, only one and
10 that's identification. I will charge it
11 if you request it. It doesn't seem to me
12 to be an issue in this case, that's up to
13 you. It's an easy charge to give to the
14 jury and you can tell me tomorrow morning
15 if you would like.

16 MR. SCHNEIDER: I would like to do
17 that if I could just have a chance to
18 either see or hear your charge before I
19 do that, your Honor.

20 THE COURT: It's substantially a
21 favorable charge for the defendant, I
22 assure you, but I don't have anything
23 written out for you. My charges are
24 ad-libbed.

25 MR. SCHNEIDER: If we can discuss it

1 Proceedings

2 first thing in the morning maybe.

3 THE COURT: I will tell you what it
4 is.

5 MR. SCHNEIDER: Okay.

6 THE COURT: The situation where
7 identification of the defendant is
8 involved and where the possibility of
9 error always exists the law requires that
10 the jury scrutinize most carefully
11 eyewitness identification testimony
12 always considering where the possibility
13 of police testimony might take place, the
14 jury be satisfied beyond a reasonable
15 doubt as to the accuracy and reliability
16 of the eyewitness identification and then
17 I go on to explain what eyewitness
18 identification is based on, lighting
19 conditions, opportunity to observe,
20 length of time, the nature of the
21 incident, descriptions given, prior
22 knowledge, all of those things in fact
23 are factors that the jury should take
24 into consideration, distance from which
25 the observations were made in this case,

Proceedings

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2 there's been some reference to 150 feet
3 this morning, 75 feet in the past from
4 other witnesses. Those are some of the
5 things that you should consider and
6 whatever other factors you deem to be
7 important in determining this most
8 important consideration as to the
9 validity and reliability of the
10 eyewitness identification the jury should
11 consider.

12 MR. SCHNEIDER: Okay, you have
13 convinced me I would like you to charge
14 that please.

15 THE COURT: Okay. Most D.A.'s
16 aren't too happy with that charge.

17 MR. SCHNEIDER: Then charge it
18 twice.

19 THE COURT: You know the danger
20 here.

21 MR. SCHNEIDER: Of course I do.

22 THE COURT: The Court will charge
23 identification, but bear in mind that
24 they knew each other.

25 MR. SCHNEIDER: I understand. Also,

1 Proceedings

2 your Honor --

3 THE COURT: Allegedly.

4 MR. SCHNEIDER: Also, there had been
5 some testimony --

6 THE COURT: See the problem is he
7 tells the police right up front who the
8 perpetrator is.

9 MR. SCHNEIDER: Not right up front.

10 THE COURT: When you say not up
11 front, okay, not for a number of hours,
12 but that's arguable both ways. If you
13 want me to charge I.D. I will.

14 MR. SCHNEIDER: Yes, I would request
15 that.

16 THE COURT: Okay.

17 MR. SCHNEIDER: There's some
18 testimony from the witness, Mr. Walker,
19 about stolen car activity involving the
20 defendant. I would ask your Honor to
21 specifically charge the jury that he is
22 not charged with any crime other than
23 murder, that they are not to take that
24 into consideration in deciding the case,
25 the sufficiency of the case regarding

1 Proceedings

2 murder that that was only offered to show
3 an alleged background or an alleged
4 relationship between the parties.

5 THE COURT: I want you to think that
6 through and let me know tomorrow
7 morning. I will grant that request if
8 you stand by it. My concern there is you
9 are going to highlight it. There's very
10 little, little evidence in this case
11 about this relationship, I suppose,
12 because the D.A. didn't have much
13 evidence in that area. I allowed it in
14 because otherwise the case makes no
15 sense, as I indicated to you through the
16 outset over your objection. You have an
17 exception to that which has been
18 preserved. It seems to me that if I
19 start to discuss that at some length I am
20 going to be highlighting it.

21 MR. SCHNEIDER: I will take, I will
22 consider it overnight and I would ask
23 your Honor to remind me.

24 THE COURT: Write something up for
25 me, I will look at that tomorrow morning.

1 Proceedings

2 MR. SCHNEIDER: I will think about
3 it overnight. At this point I would like
4 to reserve that decision.

5 THE COURT: Yes.

6 MR. SCHNEIDER: I think your Honor
7 may be right.

8 THE COURT: Mr. Piacentile.

9 MR. PIACENTILE: I am going to
10 request that the Court charge explaining
11 to the jury that the People are under no
12 obligation in this case or any criminal
13 case to prove motive.

14 THE COURT: Yes, I will discuss
15 motive with the jury.

16 MR. PIACENTILE: And I ask the Court
17 to incorporate as part of its charge
18 what's classically known as a one witness
19 charge.

20 THE COURT: You know, I do that
21 because you guys are always worried about
22 it.

23 MR. PIACENTILE: Judge, I know that
24 it was covered in voir dire.

25 THE COURT: Yes, I know that.

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2 MR. PIACENTILE: However, my concern
3 is that, and it's happened where some
4 people either were not paying attention
5 or just giving us the answers that we
6 want to hear, I believe that if they hear
7 it from the Court with the authority of
8 the black robe and all the authority his
9 honor can muster in his charge, and I
10 know that very well, any people who are
11 on the fence with that issue will
12 hopefully be dissuaded and follow your
13 Honor's instruction.

14 THE COURT: I see Mr. Schneider
15 writing. Do you have something to say
16 about it?

17 MR. SCHNEIDER: No, actually I was
18 writing so I don't forget, it was
19 something else.

20 THE COURT: I will grant that
21 request to charge.

22 MR. PIACENTILE: I ask that the
23 Court utilize the Goetz language in its
24 charge.

25 THE COURT: I don't do that. Make

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1
2 your record.

3 MR. PIACENTILE: I have asked, I am
4 -- Judge, I am not going to argue with
5 you, you know what I am looking for, you
6 said no.

7 THE COURT: What the D.A. is
8 referring to is the Court of Appeals in
9 People v. Goetz, famous Goetz case, did
10 approve of the language by the Court
11 wherein the Court advised the jury that
12 if they were convinced beyond a
13 reasonable doubt of the defendant's guilt
14 that they had a duty to convict.

15 MR. PIACENTILE: Must is the
16 language.

17 THE COURT: Must is the language. I
18 don't use that, I have never used it.
19 But I use language that is rather
20 favorable to the prosecution in that
21 regard. I tell the jury that if they are
22 satisfied beyond a reasonable doubt of
23 the defendant's guilt they should convict
24 the defendant, they should do their duty,
25 the consequences of his actions are his,

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2 they are not their's, they are not the
3 Court's. I don't like to tell the jury
4 what they must or must not do other than
5 their responsibility to acquit the
6 accused if they have a reasonable doubt.
7 That is their duty.

8 MR. SCHNEIDER: Your Honor,
9 regarding the issue of credibility of
10 witnesses I would ask your Honor to
11 include the fact that there have been
12 evidence of felony convictions, criminal
13 record/felony felony convictions, prior
14 inconsistent statements by the witness as
15 well as the fact that he has admitted to
16 committing -- lying and to committing
17 perjury. He admitted to committing
18 perjury.

19 MR. PIACENTILE: I am going to
20 object.

21 THE COURT: I won't grant that
22 request. I am going to tell the jury
23 that they are to consider inconsistent
24 statements but not the language you used,
25 I will use traditional language,

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inconsistent statements where the jury can reconcile and should be reconciled where they indicate someone is lying and telling the truth it should be rejected, so forth.

MR. SCHNEIDER: Thank you.

THE COURT: You will listen to the charge, I am sure, and you will take whatever exceptions you deem to be appropriate.

MR. SCHNEIDER: Thank you.

THE COURT: Tomorrow at a quarter to ten.

(Trial is adjourned to Thursday, March 18, 1999 at 9:45.)

1 DATE: THURSDAY, MARCH 18, 1999
 2 SUPREME COURT OF THE STATE OF NEW YORK
 3 BRONX COUNTY : TRIAL TERM PART XXXI
 4 INDICTMENT NUMBER: 7180/94
 5 PEOPLE OF THE STATE OF NEW YORK

6 -against-

7 ANTONIO MALLET,

8 Defendant

9 BEFORE HONORABLE LAWRENCE TONETTI,

10 J U S T I C E.

11 APPEARANCES AS PREVIOUSLY NOTED.

12 TRIAL CONTINUED.

13

14 * * *

15

16 COURT CLERK: Case on trial. Note for the record
 17 the Defendant is present, his attorney is present, and the
 18 assistant district attorney is present. Absent are our 13
 19 jurors.

20 THE COURT: All right. Yesterday at the conclusion
 21 of testimony after both sides had rested, the Court ruled on
 22 the motions by the Defence and we had a precharge conference
 23 where we discussed the charges to be submitted to the jury.

24 The Defence had requested the Court submit Murder
 25 in the Second Degree and nothing else. The People had asked

1 Manslaughter in the First Degree be submitted as an
2 alternative.

3 Now while I do agree with the People that
4 Manslaughter in the First Degree is a possible verdict based
5 on the facts that were presented, I think that to submit
6 Manslaughter in the First Degree is to invite a compromise
7 murder verdict in a case where the Defence has been
8 exclusive from the very beginning that this Defendant did
9 not commit this crime.

10 If he didn't commit murder, he didn't commit
11 manslaughter and to invite the compromise verdict I think
12 would be unfair to the Defendant, so that if that is the
13 Defendant's position this morning, that the Court submit
14 only Murder in the Second Degree and nothing else, the Court
15 will grant that request.

16 MR. SCHNEIDER: That is still our request, your
17 Honor.

18 THE COURT: All right. Bring the jury down.

19 (The jury enters the courtroom.)

20 COURT CLERK: Okay. Case on trial continues. Note
21 for the record that the Defendant is present, his attorney
22 is present, the assistant district attorney is present, and
23 also present are our 13 jurors.

24 THE COURT: Good morning, ladies and gentlemen.
25 The lawyers are about to sum up. I indicated to you

1 yesterday summations are not evidence, but it's the right of
2 the attorney to speak to the jury with a view towards
3 pointing out inferences that you might be able to draw,
4 conclusions that you might want to come to. That's up to
5 you. Okay?

6 There is one count being submitted to this jury,
7 Murder in the Second Degree. That's what this case is all
8 about. The Defendant says he didn't do it and that basically
9 is what it comes down to. I'll explain that more to you in
10 my charge.

11 Mr. Schneider, you may sum up to the jury.

12 MR. SCHNEIDER: Thank you.

13 MR. SCHNEIDER: Good morning.

14 About two-and-a-half years ago, September 26th,
15 1996, he (pointing) comes walking into the police precinct
16 voluntarily, on his own. No lawyer, no cops escorting him,
17 no marshals escorting him. Nobody. He comes walking into
18 the detective squad because he was informed that they were
19 looking for him for a murder case.

20 And two-and-a-half years ago his nightmare began,
21 and since that day, since he and I have been together on
22 this case, we have been waiting for this moment, for this
23 day to speak to you and to get you to finally be able to end
24 his nightmare, which he voluntarily walked into. He was
25 blind-sided. Right?

1 If he had run away, you could be sure the D.A.
2 would be talking to you about consciousness of guilt. He ran
3 away. He hid. He made himself scarce, therefore that shows
4 he had something to be afraid of, that shows consciousness
5 of guilt. So if flight shows consciousness of guilt, then
6 doesn't the fact that he came walking into the precinct
7 there, hi detectives, I'm here, I'm Antonio Mallet, you want
8 to see me for murder. Here I am.

9 Does that show conscious of innocence? I suggest
10 to you that's where you should start and that that's where
11 you have to start.

12 You look at him. He's innocent. You told me
13 that. You told that to the judge during voir dire and even
14 after the judge's charge, when you walk in the back and up
15 those stairs to the juryroom, you start with deliberations
16 by saying he's innocent and you could remember that
17 two-and-a-half years ago he walked into the precinct
18 voluntarily, as consciousness of innocence.

19 So last night, 1:00, 2:00, 4:00, I'm working on
20 this case, I'm thinking, I'm going over my notes and I'm
21 trying to figure out how can I express to you what the
22 Defence, the seriousness of the Defence on a murder case
23 against that man there and how can I get you to focus on
24 evidence or the lack of evidence, the reliability, the
25 trustworthiness and the accuracy. How can I get you to do

1 that, and the magnitude of murder, when he's sitting there
2 charged with murder?

3 And I'm thinking and thinking and reviewing my
4 notes and I said, okay. This is what I'm going to do
5 because I want you to look over at him here, pick him up,
6 take him out of here and put someone who you know and love
7 and care about in that seat.

8 MR. PIACENTILE: Objection.

9 THE COURT: Sustained. Disregard that argument.
10 Don't do that again.

11 MR. SCHNEIDER: Ladies and gentlemen, it's
12 important for you to realize, okay, that you have to focus
13 on the most serious charge, focus on the serious duty that
14 you have, as the judge will instruct you beyond a reasonable
15 doubt, on something that could affect someone forever.

16 So what I'd like you to do is, the D.A. proved
17 beyond all conceivable doubt that Michael Ledeatte is dead,
18 proved beyond all conceivable doubt that he was shot, proved
19 beyond any imagination, any imaginable doubt that there was
20 blood in the car as a result of being shot in the head.
21 Okay. We don't dispute that. How does that help you? How
22 do the bloody photographs you'll been seeing, People's 8 and
23 9 evidence in evidence, how do these pieces of evidence, how
24 does this map or this sketch, how do these, any of these
25 help you decide if he has proven that he is the guy who did

1 the murder?

2 It doesn't. They don't. They can't, because all
3 he has, all he has to rely on is Gregory Walker. Period.
4 End of story. And so what he has to do, by the very nature
5 of his job, is he has to not really focus your attention on
6 Gregory Walker because that's a real weak link in his case,
7 even though that's his whole case, so he has to focus your
8 attention elsewhere on things that don't matter.

9 And let me tell you why this is really--this is
10 something that should offend you a little bit; not against
11 him personally, but it should offend you. This is crucial.

12 What do these words say here? "Not to scale. For
13 illustration only. Not to scale." If you were to look at
14 this, right, this little green dot here where the dumpster
15 is and where Gregory Walker said he was, if you were to look
16 at this it would look like it's a short distance, it's well
17 lit, three lights here, a light over here, easy to see, the
18 car is in a good position to see. If you were just to rely
19 on this you would think, wait a second. The guy who says he
20 saw this was in a pretty good position to see.

21 But it's not accurate. It's not reliable and not
22 to scale. And they, sometime last week they sent people back
23 there with the witness himself, with Gregory Walker with the
24 tape thing to mess this at 140 feet.

25 Well, why couldn't they send those very same

1 people who could measure with some kind of a mechanism to
2 take pictures that would help you decide this case, because
3 these pictures, and I'll show some of them to you a little
4 bit later, but these pictures don't help decide anything in
5 his favour. They support our position and we'll show you
6 how because they're all with a flash.

7 Now what good is a flash? This happened at 2:38
8 in the morning when it's dark. What good is that? How does
9 that help you decide if somebody's able to see something 140
10 feet away. 140 feet is almost fifty yards, right? A half of
11 a football field. Don't just think of numbers, think of
12 distances, a half of a football field.

13 You're talking about what appears to be something
14 longer than from here to the end of the courtroom. Not in
15 these lights. Not in these conditions. So how do those
16 things help you?

17 So now let's look, and Gregory Walker is the man,
18 so the D.A. did a great job proving pliers, not to scale
19 drawings, but he's not sufficiently relayed to you reliable,
20 sufficient evidence. How do you decide if somebody is a
21 reliable person? forgetting if they're a witness, let's use
22 common sense if they're a reliable person.

23 First you look at who that person is as a person,
24 his background, his demeanour, just who he is. Then you can
25 look at what he says about a particular event, if he has

1 said the same thing in the past about the same event or if
2 he said different things, inconsistent stories, if there are
3 things that can corroborate what he says like other
4 witnesses, other scientific evidence, other documents,
5 anything that can corroborate it or contradict it.

6 So you see who he is. You see what he says; if he
7 said the same thing in the past, if he said different
8 things, if he is a liar, if he's even admitted to being
9 caught and being a liar about this particular event and if
10 there's anything that corroborates or contradicts this.

11 So let's look at Gregory Walker. On voir dire the
12 D.A. spoke to you about how his witness had some brushes
13 with the law, okay? And you will think, rightfully so, I
14 wouldn't want to automatically preclude listening to a
15 witness just because he steals cars. And that's right. You
16 shouldn't just say I could never, ever believe a car thief
17 because there are occasions when car thieves can tell the
18 truth. There is no doubt. You shouldn't, right?

19 A car thief can tell the truth and I am sure the
20 D.A. will get up here and say you know what? We can't pick
21 and choose our witnesses. He's going to say, maybe, I would
22 love if this happened in the back of a rectory or a church
23 and we had a nun or a priest or a rabbi looking out the
24 window in well-lit conditions watching what happened.

25 But he's going to say we can't pick our witnesses.

1 He's going to say Antonio Mallet picked the witness because
2 that's who he committed the crime in front of his witness.
3 But the fact is whether he can pick his witnesses or not,
4 whether he has to live with his witnesses or not, you still
5 have to rely on the witness to say that guy committed murder
6 two-and-a-half years ago.

7 I submit you cannot do that based on Gregory
8 Walker. You can't do that knowing how serious that man is
9 in terms of the charge of murder so yes, you could believe a
10 car thief but you know what? All he had to do was get up
11 here and say, yeah. I've stolen a few cars. I needed
12 money. I wanted to support somebody, whatever it is, I
13 needed a few times to steal cars.

14 He didn't say that. He said a lot more to you. He
15 was basically not only in the business of stealing cars over
16 a period of time, but he lied to you about it. He lied, not
17 only to you, he didn't only lie to uniformed police officers
18 in September of '96, he didn't only lie to plain clothes
19 detectives in '96 but in 1999, in March of '99, two and a
20 half weeks ago, he lied to a Superior Court judge in
21 Connecticut. That's the same thing as lying to a judge in
22 New York Supreme Court, same level of judge, not like it's a
23 traffic thing where you want to get out of a little traffic
24 thing.

25 So he could have got up and said yes, I stole

1 cars, but you should believe me anyway. But he didn't say
2 that. No. He said, I was innocent of all the times I've pled
3 guilty in the past.

4 Now how unlucky is this guy, right? He goes to
5 buy cars and virtually every time he buys and tries to sell
6 a car it just so happens that the paperwork is bogus, that
7 it's either forged or he's driving a stolen car or he was
8 selling a stolen car or he possessed a stolen car and he
9 came in here and told you, "I pled guilty but I was
10 innocent."

11 That's offensive to you ladies and gentlemen. It's
12 offensive because not only is he lying to you, but what
13 happened is he got in front of a judge, put his hand on the
14 Bible, he swore to tell the truth in Connecticut and I asked
15 him, and didn't the judge tell you if you didn't tell the
16 truth, that's perjury?

17 Yes. He told me that.

18 And it was Judge Dean. And didn't Judge Dean tell
19 you you're giving up your right to go to trial, you're
20 giving up your right to and see and question your accusers,
21 that you're pleading voluntarily?

22 Yes.

23 And didn't he in fact ask you if you were guilty?

24 Yes he asked me those things. Yes, I told him I
25 was guilty, but I wasn't really guilty.

1 Why did he plead guilty? So he could avoid going
2 to jail. So he can get probation, not just on one case, not
3 just on two cases, but on three cases and there is another
4 case that is still pending, that he went back to court with
5 on yesterday. We don't know what happened to that case, but
6 we do know that the D.A., after Mr. Walker testified, has
7 agreed to contact the D.A. in Connecticut on the open case,
8 no promises, he's not going to promise that anything good is
9 going to happen but he did say I will contact the D.A. and
10 tell him that you testified in a homicide case that you're
11 the only witness and that the D.A. should just take that
12 into consideration.

13 He made him no promises for his testimony. He gave
14 him no money for his testimony. He gave him no bribes for
15 his testimony. I am not saying that. I am not inferring
16 that. Please don't misunderstand me in terms of Mr.
17 Piacentile's character. This is all about Gregory Walker. He
18 tells you he's innocent but he pled guilty to take the easy
19 way out. That's call deflecting. That's called not
20 accepting responsibility.

21 Does that sound familiar to you? Does that sound
22 the way he acted when the police questioned him about this
23 murder? Reflecting, not accepting responsibility, not
24 saying he was there, not saying he was involved in stolen
25 cars, not saying how well he knew the deceased, not even

1 mentioning him for hours and hours and hours.

2 Doesn't that sound like deflecting, protecting,
3 not admitting responsibility, not taking into account what
4 you're supposed to do? Now every time he lied, every time
5 he misspoke, didn't tell the truth, the D.A. is going to say
6 to you well, he was scared. He was scared. That's a very
7 easy way to explain anything. I was frightened.

8 Except there is not one piece of evidence, not one
9 piece of corroboration which can in anyway point to him
10 threatening Gregory Walker in any manner, shape or form. The
11 fact is, according to Gregory Walker, he was hidden,
12 secreted by the dumpster in the dark and the shooter never
13 even saw him so he had nothing to be afraid about, did he?
14 And he didn't act afraid, did he? And he wasn't afraid when
15 he spoke to the detectives at three in the morning, five in
16 the morning before that because there's no evidence of any
17 detective coming in here and saying, "He appeared scared to
18 me."

19 You know why he wasn't scared then? You know
20 there was no evidence he was scared then? Because he was
21 lying then. He was telling the police he wasn't there. In
22 fact, maybe that's the truth. I'm sorry, that he wasn't
23 there during the shooting; he was clearly there, he found
24 the body. I am not saying he was never there. He found the
25 body and everything that the D.A. found and has introduced

1 to corroborate Gregory Walker's story. All it does is
2 corroborate the fact that he found the body after the
3 shooting. And he found the pliers in his hand. So what?

4 That corroborates that he saw the body. He found
5 the blood, it was on passenger side. So what? Shows us he
6 was slumped over after he was shot. So what? That's what
7 that corroborates. So what I'm telling you is that Gregory
8 Walker has lied to detectives, to police, to judges, to you,
9 to everybody that he has been required to tell the truth
10 about. So that's who he is.

11 But you know what else? So he doesn't accept
12 those guilty pleas and the open case from yesterday, not
13 only that, but how about when I mentioned his baby's mother,
14 Debbie Howell, from up in the Bronx? I asked him about
15 that. What was the first thing he said? First he said that
16 there was nothing. I questioned him a little more and he
17 said it was self-defence. Gee, that kind of sounds kind of
18 funny that her eye gets cut, self-defence? Did she just
19 thrust her face into his fist that had a ring on it and cut
20 it and he said well, it was nothing. The police came, it
21 was not a big deal, it was just, she tried to take a pop. I
22 had my hands up. It was nothing.

23 Well, didn't the police arrest you and not her?

24 Well, yeah. After they saw all the blood they
25 figured it was substantial and they took me in.

1 So it went from nothing happening to self-defence,
2 to a little scratch, to substantial blood because of the cut
3 that he accidentally caused Debbie Howell, so again he
4 doesn't accept responsibility for punching his baby's mother
5 in the eye with the ring and causing the laceration to her
6 eye. He doesn't accept responsibility for that or for the
7 cars or for perjury or for lying to a judge. So that's who
8 he is. You know he steals cars periodically and for the
9 D.A. to get up here and say, when he asked Detective Tracy,
10 didn't Gregory Walker relocate himself because he was scared
11 when we asked him, did the police ever relocate Gregory
12 Walker?

13 No.

14 Did the D.A.'s Office ever relocate Gregory
15 Walker?

16 No.

17 But Detective Tracy said, oh yes. He mentioned to
18 me he wanted to be relocated.

19 When was that?

20 The very first day, December 24th, two-and-a-half
21 years ago.

22 But two-and-a-half years when he wasn't so
23 accessible to the D.A.'s Office and he told you about that,
24 how messages were left for him, that he didn't respond, he
25 didn't call when he was supposed to, his address, so is he

1 afraid of the D.A. or is he afraid of the murderer or is he
2 afraid of the guy he has accused?

3 So we have him relocate. Relocating? The guy
4 moved to steal cars in a different state. He moved, and did
5 he protect himself by changing his name? No. So how is that
6 showing that he relocated? It just shows that he moved.

7 So let's be clear about his fear. So the D.A. can
8 always say for any time there's a lie or a mistake or any
9 kind of inactivity, irresponsible inactivity by Mr. Walker,
10 he can always say he was scared and that therefore that
11 justifies everything, but he never acted scared of him
12 (points). He was scared because he found himself in
13 trouble. He was given his Miranda rights. That's scary.
14 That's scary. Going to jail in Connecticut. That scares
15 him. Okay? That's where his fear may be.

16 So he's a bit of a liar. He's an admitted liar,
17 perjurer, a car thief. Let's look at what he says now,
18 okay? Let's be clear. He never, while he was stealing cars
19 with Michael Ledeatte backing him up, he never, ever
20 delivered a car to Antonio Mallet.

21 He never, ever delivered a car on behalf of
22 Michael to Antonio Mallet. He never saw Michael deliver a
23 car to Antonio Mallet. So because he, meaning Gregory
24 Walker, has admitted to being a car thief with Michael
25 Ledeatte, do not assume he's involved in that stolen car

1 stuff. No evidence of that. Zero, zero evidence of that.

2 You heard something about Alpine Motors. All
3 right? There is zero evidence that Alpine Motors has
4 anything to do with stolen cars, other than Gregory Walker
5 and Michael Ledeatte. There is zero and by the way, on
6 direct examination it kind of came out when Detective Tracy
7 was testifying, well, where did the other detectives go to
8 look for Cilo? They went to Alpine Motors, right?

9 So you keep hearing this Alpine Motors thing.
10 Right? Sounds like it's a chop-shop. No evidence of that.
11 But on cross Detective Tracy said when I asked him, isn't it
12 a fact that detectives went to a number of different car
13 places along in the Bronx to look for someone?

14 Oh, yes.

15 And didn't they leave their names and numbers? Oh
16 yes. Oh yes. Different places.

17 Now, is there anybody here, did the D.A., who has
18 the burden of proof, call anybody from Alpine Motors to tell
19 you that they have ever seen Antonio Mallet with Michael
20 Ledeatte? Did the D.A., who has the burden of proof, call
21 anybody from Alpine Motors to come in here and tell you that
22 they ever saw him with Gregory Walker? No. Zero. No,
23 never. There's no connection of him to stolen cars, no
24 connection of him to Alpine Motors, there's no connection of
25 him to Michael Ledeatte, there's no connection of him to

1 Gregory Walker.

2 Now the connection is made, and I think Gregory
3 Walker said it right, very interesting, he said well, after
4 I called the police, that's when everything happened. That's
5 an interesting way to look at it. No. That's when everything
6 started. That's an interesting way to look at things,
7 right?

8 The fact is, everything started when Michael
9 Ledeatte got shot and killed, but as to everything regarding
10 in terms of Gregory Walker's fear of his own involvement of
11 either the murder or not coming forward like he's supposed
12 to or being involved in stolen cars, so there's zero
13 connection of the Prosecution of him to any stolen car ring
14 or anything and he's not charged with it anything like
15 that. Don't focus on it. That's hard. That's like me
16 telling you don't think of a pink elephant dancing around,
17 but you have to know that he is not in anyway connected to
18 that.

19 So Gregory Walker says at some point he comes to
20 the back of Waldbaum's at 2:30 in the morning, expecting to
21 deliver a car with Michael and then what happens? He's not
22 expecting any trouble. He's not expecting there to be any
23 problems and he's worked with Michael before so wouldn't it
24 make sense that he would be up there where the black Lexus
25 was? Wouldn't he be there with Michael waiting for the

1 buyer of the car?

2 Why would he be holding back? He's not protecting
3 him. He didn't bring a gun. Michael didn't bring a gun, no
4 reason to protect him. He had every reason to think the
5 deal was going down the way it was supposed to. Nobody had
6 any fights or arguments. So he should have driven his car
7 from wherever he was because his job was to only protect
8 Michael from the police, drive behind him to back him up so
9 that they wouldn't see the license plate and his second job
10 is to drive Michael home after Michael delivers the car to
11 the buyer, so why would he be hiding back by this dumpster
12 here, back where this dumpster here is, in the dark, so he
13 couldn't be seen? What's the purpose? Tell me what that
14 means?

15 Well, I'll focus in on that in a few minutes. It
16 either means he wasn't there until later or he's not telling
17 you everything about what was really supposed to go on that
18 night behind Waldbaum's at 2:30 in the morning, but I do
19 want to talk a little bit about these photographs and the
20 back of Waldbaum's. I showed you that not to scale diagram.
21 Now let's look at a couple of other things.

22 Number 1, People's 7 in evidence, which you've
23 seen and you can see again, you'll take it in the back, this
24 is a picture. You can see this is where the black Lexus is,
25 so some police officer took a picture facing this way, this

1 is supposed to be where the dumpster is, this reflected item
2 here, and the car that Gregory Walker is supposedly in is
3 way back, next to or behind this dumpster. Correct?

4 So let's look. So let's look at this photograph.
5 Let's look at the back of the Waldbaum's. I suggest to you
6 it was dark. You couldn't see, it was dark. It was
7 unreliable from fifty yards away or 40 yards or 45 yards
8 away because let's look at the picture. Even with a flash
9 it's clear that this is not how light is there as we can
10 see, so the flash is what makes this bright.

11 Now you can even look, you see these lights on the
12 wall here? All the light does is just give you a little bit
13 of light, just a few feet below where it is on the wall and
14 look at this light here above the dumpster? You see the
15 light above the dumpster? All it does is illuminate the
16 light itself, just up there, it's almost like a scone in an
17 apartment, not very well lit, just a little light on the
18 wall because you see you can't even see the car.

19 The only reason you see this dumpster, ladies and
20 gentlemen, is because it's reflected from the flash bulb and
21 you know how you know that? Because look at this
22 photograph, People's 4 in evidence. This is the car. If you
23 look back here, what do you see? All you see is some
24 peripheral reflections. The lights in the walls give no
25 light because now the flash bulb is now focusing on the car,

1 so when you look in the back where this dumpster and car is
2 supposed to be, it's pitch black. Pitch black. And it's
3 pitch black there. I suggest the D.A. may say well, it's
4 darker by the dumpster and lighter by the Lexus.

5 Okay. Maybe that's partially true. But remember,
6 if you have three lights here, 1, 2, 3 lights here and 1 by
7 the dumpster and all you have here by the Lexus is really
8 just one light on this wall, nothing, there are no lights
9 directly above the Lexus. Zero. No lights directly above the
10 Lexus. A little light here, around the corner, and these
11 lights.

12 And again, this is clearly illuminated by only the
13 flash. If you look here you can hardly even see what's back
14 here because once the flash ends, you see nothing. You see
15 nothing, except for the flash illumination.

16 Now why didn't they take photographs without the
17 flash to see what it really looks like? Wouldn't you want
18 to know, if they have the burden of proof, if they have to
19 prove that somebody could see from a certain distance, from
20 a certain lighting condition, wouldn't you want to know that
21 from them?

22 So all these photographs do are just show the
23 positions of the car and the dumpster. It does not, does
24 not show you the lights and you have to know about that.

25 So back there it is clearly, clearly, not only is

1 it dark but if you look you can see how close the car is in
2 the loading bay. See, according to this diagram, right, it
3 looks like the car is sticking out. This is the loading bay
4 here supposedly, and the car sticking out? I don't think
5 so.

6 Here are the photographs. Its right up against the
7 loading bay, right? And here's the angle. The first half of
8 the car is inside this angle, inside this angle.

9 (Continued on following page.)

There are no pages numbered 416-423.

1 MR. SCHNEIDER: And let's look at
2 something else. This is a picture closer, closer
3 than the dumpster. Clearly with the flashy
4 illumination you can see in the back of that car.

5 How well can you see in there.
6 Obviously you can look closer. You can see the
7 heads or just the head rest. Can you see people
8 moving back and forth. Can you see somebody
9 sitting up or lying down. I don't think you can.
10 I don't think you can.

11 In terms of what he says looks back
12 there. It is dark, dark, dark. He says he is
13 back there. Doesn't make sense why he is there
14 in that position.

15 All of a sudden he says he sees a white
16 car. After he sees the Lexus he cannot describe
17 it, thinks its is a small Colt. No description
18 given to the police of a white car and a second
19 person other than the person he says is Cilo.

20 Never, never ever given a physical
21 description of the second person. Never, never
22 ever a physical description given of Cilo.

23 D.A. will say he did not have to give a
24 description of Cilo. He knew Cilo. Cilo is a
25 card game. Cilo could have other meanings.

1 Well, how do we know how many Cilo's there are.
2 How do you even know if he is telling the truth
3 and is reliable. He saw Cilo and the way to do
4 that is, okay, you say you know Cilo. What does
5 he look like. What is his hair, short, bald,
6 afro, straight, facial hair at all, complex
7 flexion of his skin, fat. What is he wearing.

8 There is not one bit of description
9 given to the police of what the person that did
10 the shooting looked like other than the name Cilo
11 and there's no description ever of what Cilo
12 looked like.

13 Clearly they had no some questions.
14 They had to be certain that the person that
15 Gregory Walker was referring to was the
16 Defendant, but they gave you a lineup. They had
17 to have a lineup to see if he could identify who
18 Cilo is.

19 What good is that if you don't have a
20 description to see if it matches the person, the
21 description of the person he says he saw a few
22 day earlier see if it matches him. You cannot
23 judge that.

24 See all these people here. This is a
25 fair lineup. This is as fair a lineup you can

1 get. There's nobody who is pointing to this guy.
2 That is the guy. They are all covered, there
3 hats, look at their face.

4 Do you know what, anyone of these
5 people, anyone of these people could be sitting
6 here under the same evidence. The same exact
7 evidence because if he had picked out number one,
8 they would have arrested number one.

9 MR. PIACENTILE: Objection.

10 MR. SCHNEIDER: Would be sitting over
11 there.

12 MR. PIACENTILE: Objection to what they
13 would have done.

14 THE COURT: It is his argument.
15 Overruled.

16 MR. SCHNEIDER: This is just my
17 argument. You can take it and do what you want
18 with it. I suggest to you based - - because if
19 they have nothing connecting him to this crime
20 other than Gregory Walker, if Gregory Walker said
21 number one did it, number one would be sitting
22 there. If Gregory Walker said number two did it,
23 number two one sitting there and there would be
24 nothing to corroborate what he said. I would
25 have same conversation with you if somebody else

1 gave me a call. It was one, two, three, four,
2 five or six. Not number four.

3 So, he says he is there and there's no
4 evidence at all that he has been connected to any
5 white car. No record he was driving a white car.
6 Anybody in the world saw him with a white car any
7 friends saw him with a white car, anybody from
8 Alpine. Nothing to connect him to the white car.

9 He says he sees him get out. They
10 greet each other as if nothing is wrong. As if
11 the deal is supposed to happen the right way.
12 What happens then. All of a sudden Michael is in
13 the car. One guy walks to the passenger.
14 Another guy comes to the passenger. Another guy
15 comes to the driver. All of a sudden you have
16 murder, right.

17 That make sense to you. Think and
18 step back. Think for a second. If you wanted to
19 kill the guy why would you do it in the car that
20 you supposedly wanted stolen. If you were going
21 to greet him, you can greet him. Shoot him there
22 if you want or take the gun, put it to his head.
23 Say get out of the car. Take him out of the car.
24 Shoot him there or even if you are seriously
25 desperate, shoot him in the car. Drag him out

1 quick before he bleeds all over the car you
2 wanted. Why would you meet him with somebody
3 else. Take the time to greet him. Look at the
4 car, open the door, go to the passenger side.
5 Maybe even leave your fingerprints. He didn't
6 know if they would be smudged if he did it the
7 way Gregory Walker said, open the door, closes
8 the door. All of a sudden going into to the
9 car. Kills the guy in the car you supposedly
10 wanted stolen for you. Make zero sense.
11 Illogical. Inherently unbelievable on its face
12 right there.

13 Look at the scientific part of the
14 evidence that shows it didn't happen that way.
15 The scientific part that he presented. Let me
16 back up a second.

17 I guess it was a little funny yesterday
18 when the expert, fingerprint expert guy came in
19 and I don't know about you, I kind of assumed
20 that once he testified, as he was testifying you
21 were waiting for him to say something that was
22 going to help you decide this case, right. They
23 put in this guy, expert trained by the FBI,
24 trained by the crime scene people been involved
25 in all kinds of investigations, did you not at

1 some point think when Mr. Piacentile was
2 questioning, oh, yes we recovered fingerprints.
3 Oh, yeah, his prints were in the car. Didn't you
4 except that.

5 Aren't you going to except there is
6 evidence connecting him to the crime. What is
7 the point of this guy coming up here, saying
8 there were prints of no value. As an expert I
9 defined, what's the word smudge mean to you. You
10 know what smudge means.

11 Look at the other expert who testified
12 here, Dr. Shmuter. Dr. Shmuter, has been doing
13 this for years. Clearly knows her forensic
14 pathology. May have had a hard time
15 understanding what she said she has a heavy
16 accent. Trained professional.

17 Not disputing what she has to say. I
18 approve of what she had to say on two fronts.

19 One, tattooing or stippling. Do you
20 remember those phrases, tattooing and stippling.
21 When someone shoots from a gun it gets embedded
22 like a tattoo under your skin.

23 D.A. has been doing this a long time.
24 I was surprised when on redirect he got up said
25 to Dr. Shmuter, Dr. Shmuter did you learn they

1 took him to Jacobi Hospital. Yeah. Maybe. I
2 think. Yeah. Well when they do that do they try
3 to clean the wound first. He was surprise at her
4 answer. She said I don't know and he said did
5 they wash around the wound. She said I don't
6 know.

7 Do you know what, I will give him the
8 benefit. Let's say that she says yes, they took
9 him to Jacobi and they washed the wound. Yes
10 they scrubbed the wound. Does he think I'm a
11 dummy. On recross it is very simple you can't
12 wash tattooing off. You can't wash stippling
13 off. They could have scrubbed this guy from
14 today to tomorrow by the wound and it would not
15 have made one damn bit of difference. If tattoo
16 existed, if stippling existed it would have been
17 there and she would have seen it.

18 Why is that important. It is important
19 because Gregory Walker tells you that this
20 shooting happened at a very close range. Even
21 though he is very far away, he tells you it
22 happened very quickly and very close. So let's
23 try to picture if we can.

24 I don't know mean to make light of the
25 reporter here. Assume this reporter is seated in

1 the Lexus. Okay. I am the shooter. Door is
2 opened. Supposedly he is leaning, leaning to the
3 right. This is all weird. According to Gregory
4 Walker his legs are sticking out of the car.
5 Now, when the police came they found no legs
6 stick out of the car. Found not in the car
7 leaning over to the right after he was shot. Did
8 he move his own legs. I don't think so. What is
9 that about.

10 But anyway he says at some point, you
11 know, Mr. Ledeatte is in the car slumped, leaning
12 to right a little bit. Maybe leaning forward as
13 if to make it sound as if he was doing something
14 with the pliers underneath. He did not see that
15 from those photographs from where he was. Take
16 that, ignore that, but he can see something. If
17 you even believe he was there to see it, he can
18 see somebody outside of the car of the Lexus
19 pulling out and all of a sudden shooting. That
20 is less than two feet away. Because if it had
21 been two feet away the guy would have had to have
22 been shorter, the shooter would have been
23 standing outside the car, right. This is two
24 feet or so outside the car. So that the gun
25 would have been just right there for him to see,

1 right. Two feet.

2 So, if the shot happened here, here or
3 here it should be stippling. What he says is
4 happening didn't happen. The science, tells us
5 that.

6 Let me tell you something else that
7 happened. He, himself, said in the grand jury,
8 maybe I didn't make my point clear, Mr.
9 Piacentile may have misunderstood. The detective
10 say to him could see the gun. What kind gun.
11 Said I couldn't see it. I couldn't see it.

12 I read something of his prior testimony
13 in the grand jury about the gun. He said, well,
14 I didn't see the gun. I assumed it was a gun.
15 He had it. I heard the shot. I didn't care
16 about seeing the gun. What I care about is the
17 fact that he said he took his hands outside of
18 his pockets, put a gun to Mike's head.

19 What does that mean. To everybody's
20 own common sense, not legalese, but when you are
21 talking to someone what does it mean to put a gun
22 to someone's head. Does it that mean you are
23 pointing it from two, three feet away. Does it
24 mean you put the gun to the guy's head. You
25 would have contact wound or stippling. That is

1 what he said in the grand jury.

2 What else did he say in the grand jury.
3 According to that he says that he said he,
4 Gregory Walker, saw Cilo day before this
5 happened. Not what he told the grand jurors. At
6 page three he said, while grand jury testimony is
7 not in evidence, the testimony of about it is in
8 evidence.

9 And question why the D.A:

10 "When you and Mike went to Alpine
11 Motors did you speak to Cilo?"

12 "ANSWER: No, I didn't."

13 "QUESTION: How long ago was that?"
14 What should the answer be.

15 "How long ago did you go to Alpine
16 Motors?"

17 Shouldn't the answer have been one day.
18 Sorry. Three days because he testified on the
19 27th he went to Alpine on the 24th. Shouldn't
20 the answer be three, four days. No. The answer
21 was:

22 "How long ago was that?"

23 "ANSWER: Two weeks ago."

24 On redirect what happens. Didn't get
25 upset. What did you mean by that. Said well

1 that is what I meant when I was there in the
2 past. I was there before. Did you hear any of
3 the questions about being there in the past or
4 when you went to Alpine. Did you see him.
5 Didn't say yesterday three, four days. He said
6 two weeks ago.

7 So, and the next thing about the
8 scientific evidence. The scientific evidence
9 shows you what he says he saw he could not have
10 seen because of no stippling or think, I am here,
11 I am shooting this guy, right. I am standing.
12 If I am the defendant you see a tall, taller than
13 I am, if Antonio Mallet is the shooter, I am up
14 here. He is don't there. I shoot, right. Where
15 does the bullet come out. Down. Bullet comes
16 out down, right. Makes sense, doesn't it.

17 Even if he is leaning obvious a little
18 bit, just leaning over the console a little bit,
19 if I am taller than him I am standing outside and
20 I shoot him which way does the bullet go, down.
21 What did Dr. Shmuter tell you uncontroverted the
22 direction of the bullet wound is left to right.
23 Back to front, upward.

24 You can't ignore it, ladies and
25 gentlemen. You can't ignore it. He is going to

1 try to wiggle. I don't mean him personally. Mr.
2 Piacentile is going to wiggle the deceased body a
3 little bit to show that you really maybe it could
4 be. If he is leaning this way and looking down
5 and reaching forward and then if that is the
6 position then maybe the track would go upward.
7 That doesn't make any sense. Not consistent with
8 reality and not consistent with what even Mr.
9 Walker himself said how it happened. You have no
10 stippling and upward when this is -- the guy
11 should be, should that even, either one of those
12 separately, independently is a reasonable doubt.
13 Gregory Walker himself as a person is a walking
14 reasonable doubt.

15 When the man tells you I'm an admitted
16 liar perjurer. That is himself a reasonable
17 doubt. That is what he says.

18 Then he calls 911. Does he tell 911 oh
19 by the way I just saw my friend get shot and
20 killed. No. He called them in the front of the
21 Waldbaum's. Calls them says just there's a
22 shooting. I found my friend shot and please come
23 fast. Does he get off the phone and waive the
24 police down. Say officer, officer back there.
25 Officer, officer, help, please. My friend is

1 bleeding to death. No. He is there. Police
2 come. He goes in the back. He goes in the
3 back. Ultimately does speak to the police there
4 at the scene. He speaks to the police. That is
5 what he said, his words. That is when it all
6 started.

7 At three o'clock in the morning he
8 makes a statement to the police. You know, it
9 takes a talented man to make a good story out of
10 whole cloth. Anybody can say I don't know. I
11 didn't see it. That would be a lie. If somebody
12 sees something and says I didn't see it. That is
13 a lie, but he didn't just do that. He made up a
14 story that a detective wrote down that he
15 signed. That he sworn to. He made details to
16 were just crap. I'm supposed to meet. I don't
17 know where the guys lives. I am supposed to meet
18 him at 10:30. I don't ask him why. 10:30 is a
19 lie. He wasn't there. I call back 12:30. He is
20 not there. That was a lie. All these things he
21 said were lies at that time --

22 Withdrawn.

23 He said he went back to the car again.
24 This the three o'clock statement, lie, garbage.
25 All right, but it is significant because it shows

1 a willingness to make up details, details to make
2 it sound believable because, because if you just
3 say I was there, I didn't see it may wonder gee,
4 tell me more about it. If you make up details
5 maybe they will believe him.

6 Three o'clock, garbage. He is still
7 there, a witness, 5:30 in the morning he is still
8 there. He is now talking to the police. He
9 makes up more stuff, lies, garbage, details that
10 are wrong to deflect. No accepts,
11 responsibility. He makes up stuff that fits.
12 That is 5:30 in the morning. Some time later,
13 hours later that is all before he is given his
14 Miranda rights he gives another statement to the
15 police and to be even more offensive to you, to
16 be more offensive by the way in the first
17 statement he never mentions seeing the shooter.

18 Let's be clear and the first statement
19 he never ever mentions Cilo at all. In the
20 second statement he never mentions the shooting
21 and he never mentioning Cilo and the third
22 statement what does he have the audacity to write
23 in his own hand. I swear that the above
24 statement is the truth and I did it voluntarily.
25 That is a lie. Don't just say doesn't matter. I

1 can believe him, guy is a liar.

2 Hours later according to Detective
3 Tracy Mr. Walker is gone and from the precinct
4 sometime. Is brought back at one o'clock in the
5 afternoon. I could be wrong on this. I am not
6 positive.

7 I believe based on evidence I thought
8 Mr. Walker said he remained in the precinct
9 continuously from three o'clock in morning until
10 10:30 p.m. I thought that is what he said. If I
11 am wrong, I apologize. If you think it is
12 significant, ask it be read back I don't know if
13 it matters that much, difference of what happened
14 in the hours and hours. Sometime he begins to
15 speak to Detective Tracy. One o'clock he is
16 scared, nervous and 8:30 p.m not three in the
17 morning, five, 8:30 p.m, the detectives figure,
18 well, it is time Mr. Walker you have the right to
19 remain silent. You have a right to an attorney.
20 You have the right to confer with an attorney.
21 Anything you say can be used against you.

22 Do you think that would scare him. Do
23 you think maybe that is why he start to sweat
24 profusely as Detective Tracy said. He was give
25 his Miranda rights. You are now a suspect now

1 facing going to jail, maybe implicated in a
2 homicide.

3 He doesn't know what the detectives are
4 thinking. He is given his Miranda rights at 8:30
5 p.m. He also talks about the stolen cars that
6 Michael Ledeatte and he was involved in. Doesn't
7 mention Cilo. Doesn't mentioning seeing the
8 shooting. Doesn't mention that he is the
9 shooter.

10 Again he is given his Miranda rights
11 again and at 10:30 p.m, 10:30 p.m he gives his
12 final statement. His final statement at that
13 point, 10:30 p.m says he sees Cilo do the
14 shooting. After he has given his Miranda rights.

15 Now, what does it mean, Miranda rights.
16 It means he has to now protect himself. The same
17 way he knew to plead guilty to get a lesser
18 charge and to protect himself and say whatever he
19 had to say the judge in Connecticut to give him a
20 good sentence. He knew he had to say something
21 to get the cops off his back. He knew he is
22 implicated in stolen cars. He knew he is
23 implicated in this stolen car. He had to give
24 them someone other than himself. Given his
25 Miranda rights 10:30 p.m. Boom, that is when his

1 nightmare began. He didn't know it yet.

2 What happens. This part as to eat at
3 your gut. Let me tell you why. He says, guy was
4 shot, right. He says he sees him. He sees a guy
5 act. He sees him. Hears one shot only. One
6 pop. Well, the final statement that is supposed
7 to be the truth finally, whatever that means in
8 Gregory Walker's world 10:30 p.m statement he
9 tells the police that he took the gun out and
10 shot Mike twice.

11 Scientific evidence shows he is a liar.
12 The District Attorney will get up here, tell you
13 oh, the police told me he was shot twice. The
14 police told me there were two gunshot wounds.
15 Now, this statement doesn't say I saw Mike have
16 two wounds. I saw Mike bleeding in two places.
17 He says I saw Mike get shot twice and the nerve
18 to now blame the police even if he is right.
19 Okay even if Gregory Walker is telling you the
20 truth, even if some police officer said, hey, we
21 thing he was shot twice.

22 That means he will say anything the
23 cops want him to say. That means he will put in
24 anything the cops need him to say or is he here
25 to write down the truth and the fact of the

1 matter is Detective Tracy told you I never told
2 him two gunshot wounds. I don't believe any
3 other detectives told him two gun shot wounds. I
4 never heard any cops or detective tell him two
5 gunshot wound. As far as I know the guy was only
6 shot one time. That is what Tracy told you.

7 Either Gregory Walker is lying about
8 the police telling him that or even if the police
9 did tell him that, he lied when he wrote down
10 shot twice.

11 Do not let Mr. Piacentile get up here
12 say to you because he had two wounds to the
13 entrance and exit that means shot twice. That is
14 nonsense. This man is not stupid. He knew the
15 difference between larceny one and larceny two.
16 He knew acting in concert and aiding and
17 abetting. Knows the difference between two exit
18 wounds and two entrance wounds and being shot
19 twice. Science tells you he is a lie, not me,
20 science.

21 They found a beeper on Michael
22 Ledeatte. Anybody check the beeper, any
23 detective check with Motorola to check the phone
24 records. See if there is any connection, any
25 phone records in the name of Michael Ledeatte and

1 Antonio Mallet. Phone records to Alpine and
2 Michael Ledeatte. Phone records between Gregory
3 Walker and Antonio Mallet. He had a beeper. All
4 you have to do is pull the beeper out. See if
5 any numbers are stored. Call the company. See
6 what numbers had been called. They can do it.
7 They are D.A.'s, detectives. They have the
8 evidence, potential evidence. Have the burden of
9 proof. You didn't hear about it.

10 So, you have no connection to the white
11 car. No connection to Alpine Motors. No
12 connection to that beeper. No connection to
13 Michael Ledeatte. No connection to Gregory
14 Walker. You have nothing but the word of an
15 admitted perjurer here and you have his actions
16 the acts of a man who knew the law wanted him
17 for murder and came walking in.

18 So, if the D.A. says to you, well,
19 look, if Gregory Walker was involved in this why
20 would he have waited around there for us. Shows
21 he must be innocent of anything, but it doesn't
22 make sense because if he is going to argue that
23 he has to admit that him walking into the police
24 precinct also means he is incident. So, he can't
25 have it both ways. He can't say Walker is

1 innocent because he stayed but he is guilty
2 because he came in. Can't, can't do it that way.
3 Wouldn't make much sense, right. Wouldn't make
4 much sense at all to you.

5 So, it is hot in here. I am talking
6 for a long time. You want me to stop. I want to
7 stop. I am afraid to stop. All right.

8 This is the last time I get a chance to
9 speak to you. This is it. Lawyers never like to
10 sit down. They never like to have somebody else
11 have the last word. When I set sit down he will
12 have the last word in terms of my arguments.

13 The Judge will have the last work in
14 terms of the law. In terms of what I can say to
15 you he has a chance to answer what I have to say.

16 I can't get up and do that. I will be
17 sitting in my chair and say but, but, but,
18 remember this, remember that. I will leave that
19 to for you to do. That in your own minds when
20 you deliberate you know what our theory is here.
21 Our theory is that he didn't do it. That this
22 witness who is a liar himself admitted couldn't
23 see what happened. Didn't see what happened and
24 may very well have not even been there at the
25 time of the shooting the way his first few

1 statements say. Maybe they are not lies the
2 first few statements, right. Maybe the first few
3 statements are the truth.

4 But truth is not what set him free.
5 What set Gregory Walker free from that precinct
6 after his Miranda rights is giving up somebody
7 else. Giving up somebody else. Why, what is his
8 motive. I don't know. I don't know.

9 Maybe he made an honest mistake. Maybe
10 he thought I saw someone. Maybe he needed a
11 name, had business. Who knows why. Doesn't
12 matter why because any person in his life could
13 have been there. I couldn't tell you the motive.

14 Speaking of motive, the D.A. Does not
15 have to prove motive in this case. Judge will
16 tell you that. He will tell you that. I am
17 telling you that. The fact is if there were a
18 motive here you would be allowed to consider it.
19 If there is no motive here you are entitled to
20 consider lack of motive. There is no, any
21 imaginable reason why this happened between
22 Antonio Mallet and Michael Ledeatte. No evidence
23 of bad blood. No evidence of deal did not
24 happen. No evidence of anything. No motive
25 here.

1 Mr. Piacentile will say the guy still
2 had his yellow chain. So clearly robbery was not
3 the case. Okay. That is right. Doesn't mention
4 anything about Antonio Mallet and Michael
5 Ledeatte. So, motive, and also one witness is
6 enough.

7 D.A. will tell you that the Judge will
8 tell you that. Doesn't have to be enough. Just
9 because it can be, if anyone of you were the
10 victims of a crime or witnesses to a crime --

11 MR. PIACENTILE: Objection.

12 THE COURT: Yes. Sustain the
13 objection.

14 MR. SCHNEIDER: If there's one witness
15 to a crime you can believe that one witness if
16 that witness is reliable, sufficient, credible,
17 trustworthy and believable and accurate, and
18 accurate.

19 So that is possible. Doesn't mean you
20 have to kept it here in this case. Accept it
21 here in this case. Let me see if there's
22 anything here I should tell you about.

23 (Whereupon, there is a short pause
24 in the proceedings.

25 MR. SCHNEIDER: I had enough. I think

1 you had enough. Number of times you may have
2 made jokes during voir dire, during colloquy
3 between us. We may have had some light moment.
4 That does not for one second mean that I or
5 anybody here doesn't take this case seriously.
6 Could not been more serious at all. I asked you
7 in the beginning of this case to look at him. I
8 am asking you again to look at him now because at
9 the end of the case you have to come in here,
10 read your verdict you will be individually asked
11 what your verdict is. You have to be able to
12 look at him say your verdict is based on the
13 evidence and that you believe the verdict.

14 More importantly, you can avoid look at
15 him. You have to look at yourselves when you go
16 home. Look at yourselves in the mirror or say my
17 verdict was based on the evidence beyond a
18 reasonable doubt, sufficient evidence. If you
19 cannot do that, there is a terrible mistake that
20 is going on here.

21 Only one that will pay is him and you
22 in your hearts. Remember he did not testify.
23 You have said you will not hold it against him.
24 He is presumed innocent now, as you look at him.
25 You have to say he is innocent now and D.A. has

1 to build the blocks to say the evidence is
2 sufficient.

3 Is Gregory Walker one that you want to
4 have as the foundation for building blocks for a
5 conviction.

6 Do the right thing when it is time.
7 Thank you.

8 THE COURT: Mr. Piacentile.

9 MR. PIACENTILE: I got thirsty just
10 listening to that.

11 Your Honor, Mr. Schneider, Mr. Foreman,
12 ladies and gentlemen of jury, good morning. You
13 have just sat through a very effective summation
14 by a very good trial lawyer, but I remind you.

15 MR. SCHNEIDER: Thank you.

16 MR. PIACENTILE: But I remind you
17 anything that Mr. Schneider just said is not
18 evidence. It is an argument.

19 Anything that I say to you is not
20 evidence. It is just an argument.

21 (Transcript continued on next page. . .)

22

23

24

25

There are no pages numbered 448-450.

1 You were asked, or reminded that this is a serious
2 case and at times there has been colloquy between the
3 attorneys and the judge and sometimes we all had a
4 laugh, but I assure you everyone takes this case quite
5 seriously. This case is as serious as death because there is
6 a death in this case and we tend to lose sight of that. His
7 name is Michael Ledeatte and not unlike anyone else in this
8 world, he had a family that cared for him. And now you are
9 going to be asked to review evidence and to determine in
10 your mind if that evidence is sufficient under the law to
11 convict the Defendant of murder.

12 Now counsel started his summation by saying
13 emphatically, and he emphasized again at the end that the
14 Defendant voluntarily surrendered, and somehow that is
15 supposed to weigh with you. I ask you to consider the
16 circumstances of that surrender.

17 The police had one witness who initially was very
18 uncooperative. After working on this witness and with this
19 witness for the course of almost an entire day, they finally
20 came to a name, Cilo, and they had a place, Alpine Motors.

21 Now counsel has argued there's no connection there
22 between Cilo and Alpine Motors but ask yourself this, the
23 fact of the matter is, and you know this to be true, it's
24 conceded by all sides that within twenty-four hours of
25 having those two pieces of information, Cilo and Alpine

1 Motors, they received a call from the U.S. Marshals Service
2 saying yes, Mr. Mallet will be in the precinct and low and
3 behold he was at the precinct on the date and at the time as
4 promised by the U.S. Marshals.

5 All through a nickname Cilo and a location, Alpine
6 motors. There is, without question, a connection to Alpine
7 Motors in this case. He came in with the help of the U.S.
8 Marshal Service. Where was he going to go? He was wanted by
9 the New York City Police for homicide in connection with a
10 homicide, suspicion of homicide at that point, and his
11 whereabouts were known by the U.S. Marshal Service to the
12 point where--

13 MR. SCHNEIDER: Objection.

14 THE COURT: Overruled.

15 MR. PIACENTILE: To where they could not only
16 contacted him, but caused him to show up at a police
17 precinct.

18 MR. SCHNEIDER: Objection. That's not the
19 testimony, judge. They didn't cause him to do anything.
20 Objection.

21 THE COURT: Whatever it is, there was testimony
22 and the jury can refer to that.

23 I overrule your objection. Proceed.

24 MR. PIACENTILE: Where was he going to go under
25 those circumstances? What was his choice under those

1 circumstances? So you can hear someone argue to you till
2 the cows come home that he voluntarily came in. This is
3 probably the most involuntary surrender that any jury will
4 ever hear of. The fact that he came into the precinct under
5 these circumstances is not any proof for the support of his
6 proposition. It is none. Think about it. It is none.

7 And also think about this regarding the facts and
8 circumstances of the case itself, the person who did the
9 shooting had no reason to believe that there was an
10 independent eye-witness to the crime, did they? because if
11 you recall the testimony, Antonio Mallet had no reason to
12 believe that there was anyone else at that location, in
13 behind the Waldbaum's at 2:30 in the morning except the
14 fellow in the car, Michael Ledeatte, himself, and the fellow
15 who mysteriously came around the corner and then moved in
16 and around the area of that Lexus at the time the shooting
17 occurred.

18 And it's clear that the fellow who mysteriously
19 came around the corner and the shooter in this case were
20 connected because as you heard, they both, after the
21 shooting, got into the same car and drove off. Okay?

22 So before you are willing to give credit somehow
23 to Antonio Mallet for coming in voluntarily in this case,
24 take all that into consideration. He had no idea that
25 anybody was there by the dumpster. He had no idea he was an

1 independent witness. You can speculate till the cows come
2 home as to what was going through his head, and that's all
3 this is. Defence counsel is asking you to speculate--

4 MR. SCHNEIDER: Objection.

5 THE COURT: Sustained.

6 MR. PIACENTILE: He's asking you to draw
7 inferences which are not reasonable, which are not the only
8 reasonable inferences or unreasonable inferences that you
9 can draw because that conduct in and of itself is worthless
10 under these circumstances.

11 Now counsel has referred to the diagram and he
12 said you know, that's not drawn to scale. But you know,
13 nobody's trying to hide anything from you because right on
14 the, I mean as bold as brass, on the face of the diagram it
15 says, not to scale, for illustration only.

16 And then in order to clarify distances, the
17 witness was sent back, as you heard, with detectives who
18 actually mentioned the distance and told you what the
19 distance was. So there's no attempt to, through clever use
20 of diagrams or misleading maps, to fool anyone here. If that
21 were the case, then that wouldn't appear on the diagram
22 introduced into evidence and nobody would have told you that
23 they went back and measured to the foot.

24 Now counsel has made reference to the photographs
25 in this case and he pointed out that these photographs were

1 taken at night by the use of flash, probably. Well, no one
2 hid that fact from you. And he says that you have no idea
3 whether or not people could see anything at all in behind
4 that Waldbaum's at 2:30 at night.

5 Well, you know, the photos are not meant to tell
6 you or to illustrate to you what the exact lighting
7 conditions were. No one ever said they did. But you heard
8 from a number of witnesses, both Gregory Walker and various
9 police officers and detectives who have no stake or interest
10 in this case.

11 You think a crime scene detective who's called at
12 four or five, after the fact, who has no knowledge who
13 Gregory Walker is, who didn't know who Ledeatte is, do you
14 think he's going to lie to you about the lighting conditions
15 that night?

16 Every police officer, every detective who was
17 asked about the lighting conditions in and around the back
18 of that Waldbaum's at 2:30 in the morning told you the same
19 thing. Yeah it was dark. It was darker than this courtroom,
20 but it was lit well enough to see in a dim light and that's
21 all anyone tried to tell you.

22 Also remember something else, and it's a huge
23 factor in this case in terms of the lighting conditions:
24 Where the witness was positioned by that dumpster, and you
25 can tell that much and what I'm about to say to you can tell

1 from looking at the photographs, is not nearly as well lit
2 as where the loading bay is.

3 So think about it. It's dark here, and it's still
4 dark here but the testimony is uncontroverted from both the
5 eye-witness and police sources that the lighting conditions
6 are better here than they are here. It's not as if you were
7 asked to credit someone's eyesight, if he's bathed in light
8 and he's being asked to look into a darkened area, it's
9 quite the opposite.

10 And I'm sure that everyone on this jury has had
11 that experience, that if you're sitting in a place that's
12 dark and you're looking at a place that's lighter, I'm not
13 saying light but lighter, you have the ability to see and
14 you have the ability to make out shapes and sizes and faces
15 that are recognizable to you.

16 Now counsel has asked you, and this is the thrust
17 of his summation, actually, and if I were in his shoes I
18 would be making the same summation.

19 He's asked you to disbelieve Gregory Walker as a
20 witness. However, I'm going to ask that you examine the
21 circumstances under which Gregory Walker came forward. I'm
22 going to ask that you examine the different stories and no
23 one hid that from you because you knew that on direct
24 examination, the only thing you knew about Gregory Walker
25 and this case after cross-examination that you didn't know

1 on direct was that he had a bust-up with his girlfriend five
2 July fourths ago. That's the only thing you didn't know
3 after the direct examination that came to light after the
4 cross. Just think about it.

5 The man, on direct, admitted to you the
6 circumstances under which he came forward and admitted to
7 you all the different stories that he gave the police.

8 Now how does Gregory Walker become involved in
9 this case? He tells you that he witnesses a shooting of his
10 friend. He tells you that he sees the man who does the
11 shooting and recognizes him from Alpine Motors.

12 Now it would have been the easiest thing in the
13 world for Gregory Walker-- let me just go back a second.
14 What did Gregory Walker tell you about the contact he had
15 with Mr. Mallet at Alpine? Did he tell you that he helped
16 with stolen cars with him? No. Did he tell you that he had
17 anything more than a passing hi-and-bye relationship with
18 him and maybe once in a while they shot the breeze about who
19 won last night's basketball team or what's going on where?
20 That's all he ever said.

21 And if he's such a liar about this, now I'm not
22 going to argue to you that this man doesn't lie, but if he's
23 such a liar about what he saw that night, then why didn't he
24 go all the way and guild-the-lilly and say well, you know,
25 we discussed, me, Michael and Antonio Mallet on various

1 occasions at Alpine, all about stolen cars.

2 But think about this because it goes to the nature
3 of the car theft business. How would those conversations
4 come about? Michael Ledeatte would tell Gregory we've got
5 to go to Alpine. We have some business to do. They'd go to
6 Alpine. Look who they meet. They would meet Antonio Mallet,
7 but would the three of them get together and discuss these
8 matters? No.

9 Michael Ledeatte would go off to the side with
10 Antonio Mallet and discuss whatever business it is they had
11 to discuss and what did Gregory Walker tell you he did? He
12 would step to the side, a few feet away, overhear snippets
13 of this or that, but he never once told you that Antonio
14 Mallet, that he was a participant in these conversations and
15 that he could say directly that Antonio Mallet said A, B, C,
16 or D.

17 Well, if he's such a liar about this, why didn't
18 he just--no one could have disputed that. Do you
19 understand? If he had come in here and said that, who could
20 possibly have disputed him? The greatest cross-examiner in
21 the world could not have disputed him. But he didn't, did
22 he?

23 Now how did he get involved in this case? Well,
24 the testimony is clear on that. He claims that he saw the
25 shooting. He claims that he saw Antonio Mallet do the

1 shooting, get in the car and drive away. What does he say he
2 does next? He says that he goes to the location and sees
3 his friend and sees his friend still flickering, I believe
4 was his word, is that it? Flickering is the word he used.
5 Flickering. And he described that word and that his friend
6 still had the blue-grip pliers still in his hand, which is
7 the tool they used to start the stolen Lexus.

8 He sees his friend bleeding. He tells you where
9 he sees his friend pleading and the position of his body. He
10 now goes around the front of Waldbaum's, he goes and I think
11 he said somewhere in this area in the diagram there's a
12 phone bank, and he calls 911.

13 Now this is interesting. He candidly admitted to
14 you that he never told 911 his name and he never told 911
15 that he saw the shooting. Now at this point you have to
16 understand, or imagine what's going through Gregory Walker's
17 mind and he told you, you don't really have to imagine, you
18 can just listen to him, saw his friend get shot and killed
19 by someone he knows.

20 Well shot, at that point not yet dead but
21 certainly a very, very serious wound by someone he knows.
22 He's on the phone for about a minute, a minute and a half
23 and what does he say is the last thing he says to the line
24 11 operator? Does anyone recall this? "Oh. I think I see
25 the cops coming."

1 Okay? Now if, if Gregory Walker wanted to,
2 because remember what the cops said. I want to complete my
3 point here. So he finishes 911, hangs up on them saying, "I
4 see the cops." What do the cops say? You know, you may have
5 thought, why did you bring these officers in here? They
6 didn't have that much to contribute. Well, maybe not and
7 maybe so, that's your determination, but what did the police
8 say?

9 The police said, we went around to the back. We
10 went into the parking lot. We saw nothing going on in the
11 parking lot and then we went around to the back.

12 Did any of the cops tell you that they saw the guy
13 on the phone and flagged him down and took him into
14 custody? No. Gregory Walker tells you he saw the cops come
15 into the parking lot. The cops never saw Gregory Walker
16 because at that point in time they didn't know who the heck
17 he was. Even if they saw him on the phone, what idea could
18 they have possibly had that this guy is connected with
19 what's going on in the back because they hadn't gone to the
20 back yet to see with their own eyes what's going on.

21 So what you have is you have the police in the
22 back, in and around the Lexus, with Michael Ledeatte still
23 shaking and still with the blue-grip pliers in his hand, all
24 right, because that's what the police, that is what the
25 first officer who got to that Lexus told you. And then what

1 happened?

2 His partner came and told you yeah, we went around
3 the back and the next thing I know this guy, who I later
4 learned to be Gregory Walker, shows up in back there. And
5 he has a brief conversation with me about what's going on.
6 Thirty or sixty-second conversation. So what does that
7 mean?

8 Walker, who's by the phone and unknown to the
9 police and at this point in terms of an official capacity,
10 totally uninvolved in the case, on his own, without any
11 police prompting, without having the U.S. Marshals intervene
12 for him to come to the police, he comes around and at first
13 tell us the police well, when he first comes around, there's
14 no reference in the case that he even wanted to talk to the
15 police. As far as we know he just wanted to see if his
16 friend was alive or dead or whether his friend was going to
17 get some medical help.

18 So he comes around and the police see him and they
19 say well, do you know what's going on here? At that point,
20 if Gregory Walker did not want to get involved, what's the
21 easiest thing in the world to do? Gee. I don't know. I have
22 no clue. I just saw you guys come back here. I wanted to
23 see what was going on. Hah?

24 But Gregory Walker had just seen his friend get
25 shot, severely, and now he's caught in this halfway twilight

1 zone region where whatever good spark is left in him wants
2 to get involved to see if he can help his friend out, and
3 the other part of him, the car thief side guy, doesn't want
4 to get involved.

5 You know, if Gregory Walker had made a clear
6 choice in this case and decided, I don't want to get
7 involved, as soon as he sees the police cars coming into the
8 back, he just takes off and nobody knows who Gregory Walker
9 is and nobody ever finds out who Cilo is and nobody finds
10 out who Antonio Mallet is, so he gets involved under those
11 circumstances. It's not that the police dragged him into
12 this. He put himself into this. Why? He had just seen his
13 friend get shot.

14 Now why, you ask, and counsel wants you to adopt a
15 view of the evidence that these photos mean nothing.

16 Well, what these photos are designed to do and
17 what they're introduced for is to show you where everything
18 was because the diagram obviously is not to scale. The
19 diagram isn't even complete because if the diagram were
20 complete, it would show that ramp, that delivery ramp that
21 you've heard about. It would show you the building line
22 that juts out. What do I mean by that?

23 For this diagram to be more accurate, at about
24 here it would have to show you that that building line juts
25 out and comes this way and the dumpster is actually kind of

1 like tucked into a portion of that, that portion of the
2 building line that juts out.

3 How do you know this? Because People's--you know
4 I need better eyes or longer eyes, I walk around and keep
5 misplacing the evidence--People's 1 here, the building juts
6 out, the dumpster is like halfway and there's the ramp. All
7 right? That's how you know (displaying photograph to jury.)

8 And that's one of the reasons this particular
9 photo was in evidence, so that the members of the jury would
10 be able to see the crime scene for what it is, not based on
11 a two dimensional sketch--my arms aren't that long and I
12 don't want to--you get the idea, not on a mere two
13 dimensional sketch.

14 Now it's interesting because it also shows the car
15 in the loading bay and about the last half of the car is
16 jutting out from the building line. You see where the
17 dumpster is and you see the position where Gregory Walker is
18 marked with a G, he's literally etched that into the
19 photograph where he was and it's clear he's somewhere out
20 here and this diagram is not accurate because as you can
21 tell from the photo, the back of the car stuck out at least
22 halfway from the building line.

23 Gregory Walker had an absolutely perfect angle if
24 you believe that's where he was to see what he claims to
25 have seen and now the lighting was dim. Nobody hides that

1 from you. The very first witness who was ever called told
2 you the lighting was dim, but not so dim that you couldn't
3 see, and each and every witness in this case who was asked
4 about the lighting conditions told you the same thing.

5 No one's trying to pull the wool over your eyes to
6 make you think this is brightly lit back there because it's
7 not. But also take into account Gregory Walker had met Cilo
8 on numerous occasions at Alpine Motors. This is not a
9 complete stranger to him. So no matter how dim the lights
10 may have been, you have to understand that this case is not
11 so much one of description as it is of recognition.

12 We've been sitting here for a week or longer. If I
13 were asked to describe one of you folks or you were asked to
14 describe me, your accounts of my description may differ. My
15 accounts of your description may be a little off here or
16 there. I might be correct in certain, you know, certain
17 respects. I might be off a little bit, but you want to know
18 something? There's no doubt that a week from now, ten days
19 from now, two weeks from now, if one of us passes somebody
20 in the hallway somewhere or in a department store somewhere,
21 we're going to say, you know, I know that person from
22 somewhere. You think about it, think about it. That's
23 right. I know that lady. She was on my last trial. That guy
24 was on my last trial.

25 To think about it's even more intense than that

1 for Gregory Walker. How does he know this guy? He claims to
2 know him from Alpine Motors, to know him from Michael
3 Ledeatte. He tells you quite candidly, Mike and I used to
4 work together to steal cars. We were stealing a car for him
5 (pointing). This is like business relations now.

6 So there's no question, you know, there can be no
7 question here in your mind that this is a mistaken identity
8 case. None. Gregory Walker is either telling you the truth,
9 now we know that Michael Ledeatte was shot and killed and we
10 know that Gregory Walker, I think it's fairly clear from the
11 evidence and I think it's conceded that Gregory Walker was
12 there. This cannot be a mistaken identity case because these
13 people knew each other and they knew each other too well, so
14 either Gregory Walker is lying about the identity of the man
15 who he saw shoot and kill Michael Ledeatte, or he's telling
16 you the truth.

17 Now, how do you figure out if he's telling the
18 truth? Well, he was right about the connection to Alpine
19 Motors. That panned out.

20 He told you that he saw the shooting from a
21 certain angle and that the view of the shooter at the time
22 the shot rang out was obscured to him. Let us use this table
23 here as the Lexus. Now I know the Lexus is probably longer,
24 but I'm only using this in terms of a demonstration.

25 He told you that he saw (walking to the back of

1 the courtroom) Antonio Mallet walking from this direction.
2 Now if Gregory Walker is down in that direction and that's
3 the Lexus, he tells you he saw him coming up this way. As he
4 walks past these stairs or steps or whatever they are that
5 are readily apparent, you see when I walk around the
6 courtroom, I lose the exhibits. Here we go. Okay. Perfect.
7 People's 2.

8 He tells you he sees a white car here and he sees
9 Mallet coming from this direction past these stairs and you
10 know, here's the picture of the stairs, right? You see
11 this? And you know, the diagram's in error again, isn't
12 it? The diagram shows a single light here. But the photo
13 shows two. So whatever dim light was there, it was
14 illuminated by not one but two overhead lights, okay? And
15 that's the direction that Antonio Mallet comes from.

16 Here, two lights, not one. Two. So he sees Antonio
17 Mallet coming from that direction and what does he have to
18 say about the shooting itself? Because remember, he's got
19 the angle like this. If the judge is in the direction of
20 Gregory Walker and I'm Antonio Mallet, what does Mallet do?
21 He walks around the back of the car and comes to the
22 passenger side. The door is opened.

23 Now remember, this car had not only one door but
24 both doors open, so additional illumination was provided by
25 the interior dome light, okay? Just think if you've ever

1 gone someplace where there's valet parking and you're
2 watching the guy to make sure he didn't mishandle your car
3 when he drove it back to you and he opens the door and the
4 dome light went on.

5 Well, that's the kind of illumination that's
6 provided, so even though you might be standing in somewhat
7 dark conditions in your evening out, you can sure as heck
8 see the guy who's opening the door of your car.

9 Now, so there's that additional little bit of
10 light. I'm not saying this is a floodlight or like if you're
11 at Yankee Stadium at a night game, very well lit, where you
12 can see everything clearly. There was sufficient light,
13 that's all I'm saying, from a number of sources, to show,
14 I'm trying to point this out, to show you that when all
15 these witnesses came in and all agreed it was dim but you
16 could see, yeah. It was dim but you could see and you had
17 every reason to believe them.

18 So now he opens the door up, looks in, and then
19 what happens? Well (looking through trial transcript)
20 Gregory Walker was asked a question.

21 What, if any motion did the Defendant make just
22 before you heard the shot?

23 He was bent in the car, looking in the car.

24 QUESTION: He being?

25 ANSWER: The Defendant.

1 Now remember, the testimony had been that Michael
2 Ledeatte was in that car
3 (Mr. Piacentile sits) and had bent over kind of like this
4 into the centre area console, the centre console area, so
5 now picture this. Here's Michael Ledeatte, right? Mallet
6 comes from this way and he kind of like leans into the car
7 but remember, Gregory Walker candidly tells you he's seeing
8 this from 140 feet away and can't see clearly because the
9 car is literally in the way. So what does he say happens
10 next?

11 He slowly came out of the car and took his hand
12 out of his jacket, Remember, he did this for you a couple of
13 times.

14 Not out completely. I couldn't see what he had in
15 his hand but to the point where I heard one pop.

16 Now, does that make sense or do you think he's
17 making this up? Ask yourself, under those circumstances how
18 much would you expect that he would be able to see from his
19 vantage point? If he told you he saw the gun, that would be
20 a fantastic event. The fact that all he could tell you was
21 he saw the guy make the motion with the hand and heard a
22 pop, that's perfectly logical and perfectly consistent.

23 Now he was asked about it again.

24 Was the gun inside the car at the time it was in
25 the shooter's hand when he fired?

1 Answer: From the distance, from the distance I
2 was I couldn't tell how far away the gun was.

3 (Continued on following page.)
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There are no pages numbered 470-476.

1 MR. PIACENTILE: Now, this dovetails
2 with the Medical Examiner's testimony. The
3 reason questions were asked of the medical
4 examiner, she explained stippling occurs when the
5 gun within two feet of the target when it is
6 fired. Reason she is asked about that is because
7 if they had found stippling in this case that
8 would be inconsistent with the version of facts
9 given to you by Gregory Walker. Remember he said
10 at the time Michael was shot he was leaning over
11 into that console area. He says Antonio Mallet
12 had backed away from the car. Then said he
13 extent his hand. Never said he leaned in.

14 Under those facts and circumstances,
15 ladies and gentlemen, where he really couldn't
16 tell you the exact distance. I submit that on
17 that evidence and on those physical facts had
18 there been stippling indicating scientific
19 evidence, medical evidence indicating that the
20 shot had come within two feet then you would have
21 had reason to doubt Gregory Walker's version of
22 the events. In fact, the scientific evidence
23 supported Gregory Walker's version of the events
24 because Gregory Walker's version of the event has
25 to put that gun further than two feet away from

1 the head of Michael Ledeatte when the shot is
2 fired.

3 Now, counsel made reference to the path
4 of the bullet through the head. I think the
5 medical examiner said it entered here. Came out
6 here. The track of the wound was up. After all
7 if this man is so tall you would think it would
8 be down. The position, remember the position
9 that the victim was in when the shot was fired.
10 This is it right in here, out here. Somewhere
11 like this but like this, right.

12 He is bent over. Watch this. I'm not
13 going to move my figures, but as my head turns
14 the angle through the body stays the same. Goes
15 to show you that it depends what position the
16 head was at the time the shot was fired. That is
17 all that shows. Do you know what this shows, if
18 I am leaned over in the driver's seat of a car,
19 leaning over the center console what does this
20 show you. It shows you that that gun was fired
21 from above my head pointing down at me. That is
22 what it shows and what did Gregory Walker tell
23 you the position of the shooter was relative to
24 his friend. You see, if Michael Ledeatte was
25 seated up, if there was no question he was seated

1 upright, I can go like this, like I am now and
2 this is the angle.

3 Then obviously you would have to say
4 down. I would anticipate or expect the guy
5 Antonio Mallet's size if he shot the gun that way
6 he would have to be holding the gun like this.
7 Although, there's no evidence he was holding the
8 gun in any particular position, down. It is not
9 definite proof of anything. All I am saying in
10 this with this angle through the head and
11 Michael, excuse me Gregory Walker, saying this
12 was basically the position Mike was in, that
13 indicates he was shot by a guy pointing down at
14 him.

15 Under those circumstances that have
16 been described here was there anyone here who
17 when he or she envisions this in his or her mind
18 thinks he was shot from below. He was shot from
19 - - you all thought, I think rightfully so, he
20 was shot looking down. The medical evidence is
21 consistent with Gregory Walker's testimony and
22 his version of the events. It is absolutely
23 consistent on two basis.

24 Angle of the bullet through the head
25 and the fact there was no stippling. Absolutely

1 consistent. If stippling had been found we would
2 have had a real problem with Gregory Walker's
3 version of the events here.

4 When Antonio Mallet is brought to that
5 precinct, cops had a nickname, Cilo they tied to
6 Antonio Mallet's name. They put him in a lineup.
7 Why, as counsel rightly pointed out I suppose
8 anyone of us could be nicknamed Cilo. They want
9 to see if the Cilo that they had was the Cilo
10 that Gregory Walker had. Bingo. Take a look at
11 this lineup. Some of you sat on juries before.
12 I don't know if lineups were present in those
13 cases. I don't know if any of you have seen
14 lineups. I agree with counsel. You are not
15 going to find a fairer lineup than this one.
16 They covered everybody's body up to the chin with
17 a white blanket, put a blanket with dark wool
18 caps on. All you could see is the face. Nobody
19 can say he is identifying a piece of clothing or
20 hair style. He is identifying a body type. He
21 is identifying height or weight. He is
22 identifying a face. All right. Identifying a
23 face. You should be.

24 The Cilo he is talking about is Cilo
25 that is at this time sitting there.

1 Now, what else do you have that
2 supports Gregory Walker's testimony. Gregory
3 Walker's testimony, he says when he saw his
4 friend in car he was flipping and had those blue
5 grip pliers in his hand. What do the police tell
6 you. First officer to get there, I walk up, up
7 by - - what did he say about the doors, doors
8 were open. Didn't he Gregory Walker. What did
9 the first officer on the scene tell you, both
10 doors are open. He tells you his friend is
11 slumped this way. What does the officer tell
12 you. All the officers who saw Michael Ledeatte
13 in that car, slumped over. Says his friend was
14 flickering. What did all the other officers tell
15 you. Flickering. They say convulsing. This
16 blue grip pliers in his hand by, still in the
17 hand flickering.

18 Two photographs were introduced into
19 evidence late yesterday and you have not had a
20 chance to see them.

21 THE COURT: Let me interrupt you for a
22 moment. I sustained the objection to those
23 photographs while you were here. After you left
24 I had oral argument. I reversed myself. They
25 are now in evidence. They will be available to

1 you.

2 You can proceed now.

3 MR. PIACENTILE: Thank you.

4 What they show is the blood splattered
5 interior of the Lexus both on the driver's side
6 and the passenger's side. These are not meant to
7 inflame your passion because you know something,
8 you are all intelligent folks. You understand
9 this is a homicide case. You know someone is
10 dead. If that doesn't get your level of
11 seriousness up then nothing I can say, do or show
12 you will do that.

13 What these pictures are meant to show
14 you is how the physical evidence supports what
15 Gregory Walker said. Remember this is all being
16 done two and a half years later. Gregory
17 Walker's statement was taken from him before all
18 this was available.

19 Remember, Detective Tracy was never
20 even at the scene. He is the one who finally got
21 Gregory Walker calmed down or comfortable to the
22 point where he coughed up who he saw do the
23 shooting.

24 Now, the first photo shows the driver's
25 side of the Lexus and the center console shows

1 blood smears, blood collected in the center
2 console.

3 Second photo shows you the passenger.
4 Here is the first photo. Everybody can see it.
5 You will have the opportunity to take it into of
6 the jury room with you. Examine them at your
7 leisure.

8 Second photo shows the front of that
9 Lexus from the open passenger door and in it you
10 can clearly see the open driver's door to the
11 other side.

12 You can actually see the blood pooled
13 in the center console. If you will notice there
14 is significantly more blood. Significantly more
15 blood on that passenger side seat.

16 Now, what does this mean. Well, if you
17 recall what the medical examiner said, she said
18 that the entry wound was here behind the left ear
19 and exit wound was out the right side of the head
20 toward the rear, right and that the body was
21 found slumped to the right. The wound was
22 bleeding from, profusely bleeding as she put it,
23 from the exit wound.

24 Well, you know, these photos prove
25 that. They show that. Nobody is making that up.

1 Also I point out something else, the visible,
2 visible -- I know, I can see some of you are not
3 reacting. I will cover up the vast majority of
4 the blood that shows in this photo.

5 If you look down here in the lower,
6 toward the lower right-hand corner you will see
7 clearly the blue pliers, blue grip pliers to the
8 floor of the passenger side of the vehicle. Does
9 everyone see that. I want you to nod your head
10 if you see what I am talking about. I point it
11 out right here. Does everyone see what I am
12 pointing at, especially you folks in the back.

13 Remember how Gregory Walker told you
14 his friend was like this, flickering and when
15 those blue grip pliers are released, where do
16 they fall. They are falling to the passenger
17 side. The photograph is consistent with the
18 version of events given by Gregory Walker and
19 consistent with the version of the circumstances
20 of the post-homicide scene as testified to by all
21 the police officers.

22 Gregory Walker did not want to get
23 involved in this case. That is a fact. That you
24 can draw from this evidence. I think this is
25 uncontroverted, but he was caught as I say in

1 that psychological twilight zone between
2 abandoning his friend who he still thought might
3 be alive and running away for his own good and
4 when the police see him in back they say, what is
5 goes on. He doesn't say I am just back here for,
6 you know, just to see what is going on. I have a
7 more bid curiosity. He says I found the body.

8 Okay. Now, 2:30 in the morning what is
9 first question that anyone would ask. What were
10 you doing behind here at 2:30 in the morning.
11 Then they start working on him. Comes up slowly,
12 but surely, you know, this, that giving rigmarole
13 and Kevin Tracy says after working on this guy
14 nine hours and finally says I saw Cilo shoot me
15 friend. We were involved in stolen cars. They
16 gave him his Miranda rights as you heard not
17 because they suspect him of crime. He started to
18 stray in the area of stolen cars. The man you
19 told on a number of occasions that he was
20 frightened. He was scared. Well, it is not, it
21 is not beyond any capacity to understand why he
22 would be scared under the circumstances. He had
23 been literally secreted in the dark and witnessed
24 his friend shot and killed for reasons that are
25 still unknown by someone. He knew, he knew they

1 were delivering a stolen car to Cilo. He knew, I
2 would assume if Cilo, if he knew Cilo from Alpine
3 it had to go through his head that Cilo knew him.

4 Now, there's no testimony that they,
5 that anyone had ever told Cilo that Gregory
6 Walker would be backing up Mike Ledeatte that
7 night. The only testimony that you have in this
8 case is that the shooter was backed up by
9 somebody else. I don't know if he had any reason
10 to believe there were independent eyewitnesses.
11 Not just an independent witnesses who knew him.
12 Is it unreasonable for him to be frightened. Is
13 it unreasonable for him, this is a petty thief.
14 He is a petty thief delivering a car to a
15 customer. Not a member of Murder Incorporated.
16 Not a guy who goes around shooting, killing
17 people for a living. He is a car thief. He
18 alters registrations and vehicle identification
19 numbers so they can sell stolen cars with
20 somewhat baptized or clean titles to unsuspecting
21 purchasers. This is not had a gunman, gangster.

22 He had every reason -- here is a guy
23 thought he was in a stolen car deal. All sudden
24 finds out he is up to here on a homicide. Do you
25 think he didn't have a reason to be scared. Do

1 you think that he was lying to you when he told
2 you he was scared.

3 Folks, this is a case of recognition.
4 That is it, a case where the police dealt--

5 By the way, counsel questioned why
6 fingerprints were called. That was to explain to
7 you someone could touch the surface of a car and
8 not leave any identifiable fingerprints. That is
9 what the fingerprint expert told you. There are
10 so many different valuables involved. You can
11 touch a surface and not leave fingerprints. Was
12 anybody here thinking after all he touched that
13 car. He had to leave a fingerprint. Now you
14 know that you don't have to leave a fingerprint.

15 So, the fact that the fingerprints are
16 not there, not clearly identifiable, remember
17 told you they have smudges, not clearly
18 identifiable, is not proof that work against
19 Gregory Walker's testimony in this case. It has
20 no evidentiary value.

21 We have the stipulation as to the
22 ballistics expert who compared the fragments
23 recovered from the crime scene with fragments
24 recovered during the autopsy.

25 Folks that was to complete the picture.

1 Unless you have a gun to compare against, You
2 have fragments or pieces of bullets or whole
3 bullet found, you can't compare them to anything
4 unless you have gun. That was just to round out
5 a picture.

6 What you have to examine here and you
7 have a case to consider, you have a witness who
8 fired, the shooter from before. You have a
9 witness who not only tells you he knew him, but
10 you know for certain in your own minds that his
11 connection is correct because of the manner in
12 which the defendant surrendered.

13 He knew him from before. The lighting
14 conditions were dim, but viewable lights here.
15 The shooter came out of a spotlight with a man
16 further away. Car doors were open. Interior
17 dome light was on. Walked around. You see, he
18 did not just stay on the driver's side, walk
19 around the passenger side giving him a better
20 view. He walked back around. Gave him a better
21 view still.

22 I asked him I think at one point in
23 time when did you first recognize it was Cilo.
24 He looked like at me like I was crazy. He said
25 right away I knew who Cilo was. Why, why, why.

1 This is not a mistaken identification. This is
2 like the old Frank Sinatra song, "All or Nothing
3 at All." He is either telling the truth or lying
4 about it.

5 Ask yourself this, what is his motive
6 to lie about Cilo. If he saw and shot and killed
7 his friend, is fearful that the man who shot and
8 killed his friend might come after him, why would
9 he lie about Cilo and leave the guy who he knows
10 in his own heart and mind is the actual shooter
11 actual threat to him. Why would he leave him out
12 there on the street. Does that make sense. That
13 makes no sense.

14 He is frightened because he knows the
15 man who shot his friend. He came forward in a
16 hesitant fashion, reluctant fashion, less than
17 honorable fashion, but, you know, he came forward
18 and they can't shake him from his story as to who
19 he saw do the shooting. He has no reason to lie
20 about the man sitting there.

21 He has every reason to come back here
22 and tell you who did the shooting so that man
23 does not have the opportunity to threaten him at
24 least in his mind have the opportunity to
25 threaten his safety.

1 So, why pick on Cilo unless Cilo is the
2 guy who pulled the trigger.

3 Now, the law imposes upon me the
4 obligation to prove the case beyond a reasonable
5 doubt. The judge is submitting one count to you,
6 murder in the 2nd degree and the Court will
7 instruct you as to what elements have to be
8 proven to your satisfaction beyond a reasonable
9 doubt before you can convict anyone of murder in
10 the 2nd degree.

11 When the Judge gives you that portion
12 of the charge on the law I want you to consider
13 the following fact: The shot was fired while the
14 shooter was standing outside a vehicle that had
15 its doors open. The target of this shot was
16 seated inside a car with no place to go. No
17 place to run. No place to hide. The shot
18 entered the skull behind the left ear. So,
19 literally the victim was shot when he was turned
20 away. It was a coward shot, assign's shot in
21 terms of where the head was turned when the
22 bullet was fired.

23 You will have to decide, first of all
24 you will have to decide whether you believe
25 Antonio Mallet is the fellow who fired the shot.

1 When you decide that, if I decide he was guy, you
2 have to decide what his intent was when he fired
3 the shot.

4 The Court will tell you what intent is
5 required to be proven by the prosecution before
6 you can convict someone of murder.

7 Now, in its charge the Court will tell
8 you basically two ways you prove identity. You
9 can prove it by the words spoken by the person
10 announcing his intention or you can judge his
11 intent based upon what he did, his actions and
12 folks in a case like this you know, has anyone
13 heard the expression like shootings fish in a
14 barrel. That means that the fish in have no
15 place to go. They don't have a fair chance. Not
16 a sporting chance at that point.

17 So what happened here, some poor guy
18 thinking he was delivering a stolen car to
19 Antonio Mallet leans down, supposedly fiddling
20 with the ignition and the pliers and as his head
21 is turned away Antonio Mallet takes the gun and
22 fires point blank at the back of the man's head.

23 Now, some people will say he only fired
24 once and the body was still flickering or
25 convulsing when he left. How do I know he

1 intended to kill him. That may sound strange to
2 some people sitting in the jury box. I assure
3 you I am at this a long time. I go over this not
4 to bore you or not to repel you. There's a
5 reason. This is what you will have to determine
6 if you determine that Antonio Mallet is the right
7 guy.

8 What was his intent, did he intend to
9 kill. Well, yeah, he shot once. The back of the
10 head at close range. Stood there for a moment
11 and then ran. What was he looking at. Looking
12 to see what damage he did. What damage did he
13 do. He had this man flickering, convulsing,
14 unable to communicate with anybody and bleeding
15 profusely. The job was done. He intended to
16 kill him and he said - - excuse me. He intend to
17 kill him. He carried it out and looked at it.
18 Looked at his handy work to make sure and ran to
19 the car at that point, that time. The most
20 important item on his agenda was to get away
21 clean.

22 Do you know, if Gregory Walker had not
23 been by that dumpster he would have gotten away
24 clean. If they had driven this car this way they
25 would have passed right by Gregory Walker. Turn

1 this way, they thought they were away clean. Had
2 no reason to except that Gregory Walker was going
3 to be there. Obviously did not see him, by the
4 grace of. Good luck and go ahead. Went the
5 other way instead of literally crashing into
6 Gregory Walker as they peel out of the back of
7 that parking lot to get away.

8 Only fired once. That is all it took.
9 You heard the M.E. That bullet and that fragment
10 ripped through every major portion of Michael
11 Ledeatte's brain. That was a fatal wound in the
12 M.E's words, no hope of recovery. Could have
13 suffered that wound in the emergency room in the
14 greatest trauma center on the face of this earth
15 and nobody is saving him. One shot sometimes is
16 all it takes. I don't want anybody in this jury
17 to get the wrong idea. This was not a situation
18 based on this evidence that they were just trying
19 to scare this kid or trying to hurt him in some
20 way. This was a shot intended for one purpose
21 and one purpose only and that was to kill and it
22 can kill. All the medical, all the scientific
23 evidence supports the version of the events given
24 by Gregory Walker. Car thief, sometime liar and
25 little wonder who is scared to death that he

1 witnessed this.

2 Who came forward reluctantly,
3 hesitatingly and would not cough up much of
4 anything until being worked on and work on. What
5 were you doing back there 2:30 in the morning.
6 Makes no sense. Come on, talk to us. Worked on,
7 worked on until finally whatever conscience he
8 has got the better of him. He said it. Okay, it
9 is a stolen car. Here is the deal. I know Cilo
10 from Alpine. It is Michael Ledeatte. We were
11 involved. Story comes out.

12 By the way, is there anybody in jury
13 who doesn't think that the cops were saying to
14 him you have to be wrong. There's two shots, not
15 one. We have two holes in the head. When he
16 tells you that, you know that had the ring of
17 truth to it. Here is somebody pounding way,
18 pounding way and all sudden said shot once. Cops
19 under the mistaken believe at that point the guy
20 was shot twice.

21 MR. SCHNEIDER: Objection. No evidence
22 of that, Judge.

23 THE COURT: I don't recall. The jury's
24 recollection controls.

25 You are about done; aren't you?

1 MR. PIACENTILE: Close.

2 THE COURT: Well, your time is up. You
3 are winding up.

4 MR. PIACENTILE: No one discussed the
5 Medical Examiner's report with him. He told you
6 he heard one shot. Scientific evidence is one
7 shot.

8 So, folks, go over the evidence in this
9 case. Pictures all mean something. Let me
10 introduced for a reason. All witnesses brought
11 here for a reason because in there own way
12 everybody's testimony, scientific testimony,
13 photographic evidence here is meant to show you
14 that everything supports the version of the story
15 given by Gregory Walker. He had no reason to lie
16 about who did the shooting. He had every reason
17 to come back here tell you who did.

18 Based on the evidence, based upon
19 everything that you saw and heard in this
20 case the appropriate verdict in this case is
21 murder. It was a kill shot fired from fairly
22 close range. Not contact shot. No stippling.
23 From fairly close range. A target who wasn't
24 even looking. Seated in a car. Nowhere to move.
25 No way to duck. Didn't even know the shot was

1 coming. Never gave him a chance. It was an
2 assign shot. Clearly intended to kill.

3 Based on everything, I have gone on too
4 long folks, go upstairs, look at the evidence.
5 Come back here. You know counsel is right. You
6 have to go home at some point in time. Look in
7 the mirror say you know I did the right thing on
8 that case.

9 The evidence in this case should tell
10 you that the right thing is to tell Antonio
11 Mallet you shot Michael Ledeatte in the head and
12 you killed him. That is murder.

13 Thank you.

14 THE COURT: Ladies and gentlemen, we
15 will take a break. Go upstairs. Don't discuss
16 the case yet. Take a five minutes break.

17 COURT OFFICER: Jurors step this way
18 please.

19 (Whereupon, the jury panel leaves the
20 courtroom.)

21 (Whereupon, there was a brief recess in
22 the proceedings.)

23 THE COURT: All right. Case on trial.

24 COURT OFFICER: Jury, your Honor.

25 THE COURT: Yes.

1 (Whereupon the jurors entered the
2 courtroom. All jurors are present.)

3 COURT CLERK: Case on trial continues.

4 Note the presence of the Defendant who
5 is present, his attorney is present,
6 assistant district attorney present.

7 Present are all thirteen jurors.

8 THE COURT: Ladies and gentlemen, first
9 I want to extend to you my sincere appreciation
10 for your willingness to participate in the trial.

11 As you observed during the selection
12 process many people gave whatever excuse they
13 could think of in order to get out of doing jury
14 duty and I was pretty liberal. Let most of them
15 go because my feelings are that if you really
16 don't want to serve then you will not be a fair
17 juror.

18 So, I thank you each and everyone of
19 you for having participated in the trial and for
20 serving in this case. Without jurors we can't
21 continue the business of the courts.

22 We have come now to the point where the
23 Court must instruct you on the law. Much of what
24 I am about to tell you now you have already
25 heard. It is repetitive, but the importance of

1 it is that you understand what it is that you are
2 doing upstairs in the jury room.

3 Back in September 1996 a terrible crime
4 occurred, a homicide, where a person was killed.
5 This defendant, Mr. Mallet, has been accused of
6 that homicide. He has plead not guilty denying
7 these charges which is the reason we have all
8 come together here to listen to the evidence in
9 this case.

10 Now, it is for you to determine based
11 on the evidence that you heard whether or not the
12 district attorney has proven his case beyond a
13 reasonable doubt. That is what your duty is.

14 In doing that I caution you that you
15 are not to be detectives. I don't want you going
16 upstairs and starting to say let's figure what
17 this out. Let's figure this all out. Decide
18 what really happened here. What is this all
19 about. We heard some talk about cars and stolen
20 cars, et cetera. What is it all about. That is
21 not your function. That is your job.

22 You're not detectives. You are jurors
23 and the juror's duty is to decide the case on the
24 evidence or lack of evidence that was presented
25 in this courtroom and nothing else. You do don't

1 decide on who you like or don't dislike, which
2 lawyer is a good lawyer, which lawyer is a bad
3 lawyer.

4 By the way, they were both excellent
5 lawyers. You have seen that as you sat through
6 this trial. I commend them. This has been a
7 very easy trial to preside over mostly because
8 the lawyers were so well prepared and knew there
9 stuff and argued as professionals. So, I thank
10 them for their advocacy.

11 Now, what is the most important job
12 that a jury has. Right, we discussed this when
13 you were being picked. My job is to explain the
14 law. Your job, who is telling the truth. What
15 is this, what happened here. Based on what you
16 heard in this courtroom you have to decide the
17 question of credibility. Who told the truth
18 specifically, Gregory Walker, the key to the
19 case.

20 Gregory Walker says that in that lot
21 behind Waldbaum's that night, early morning
22 hours, he saw this defendant shot and kill Mr.
23 Ledeatte. Are you so satisfied that what he says
24 is true, that he saw what he says he saw. That
25 is for you to resolve and how do you do that.

1 Well, this morning when you came to court, as
2 every day, you brought with you the ingredients,
3 the tools to help you decide that. What is that.
4 That is your good common sense and your life's
5 experience. You people who live in the real
6 world, you did not come here this morning out of
7 a vacuum. You came here. You interacted, bought
8 a newspapers, bought coffee, tea, sat upstairs,
9 talked about, hopefully not the case, you talked
10 about life in general among yourselves.

11 Having come together as a group now
12 bring all those things together in discussing the
13 facts of this case. What makes sense. What do
14 you believe is true. That is really what you
15 have to do.

16 Now, some of you may say well, Judge,
17 we've heard about polygraph tests, lie detector
18 tests. Why wasn't a lie detector test used. Why
19 not use a lie detector.

20 Well, our courts have considered it.
21 We are almost in the 21st century now. We have
22 looked at this. We have experimented with
23 polygraph tests. Do you know something, do you
24 know what we found, people can beat the lie
25 detector test. They can beat that box, but there

1 was an even greater danger that they discovered,
2 the psychologists who experimented with this.
3 That is that an innocent person confronted with a
4 lie detector test because he or she is so nervous
5 and whatever could come out looking like a liar
6 when they are really telling the truth.

7 So, the courts said that is enough of
8 this. We have a better system. We have twelve
9 people like yourselves, all of whom want to do
10 the right thing. Share your common sense, your
11 knowledge, your lives experience. You know what
12 to look for.

13 You have heard that witness on the
14 stand, Gregory Walker. How did he impress you.
15 Did it look to you like he was trying to get over
16 on you. You have heard and counsel has argued
17 vociferously and quite properly that he has told
18 lies and there is no question he told lies. He
19 admitted to you that he lied to the police. He
20 had admitted to you he lied when he was
21 confronted with this car theft business up in
22 Connecticut. Told the judge whatever the judge
23 wanted to hear in order to get a good deal.

24 Does that mean he is not telling the
25 truth with respect to what he says he saw in the

1 lot behind Waldbaum's at 2:30 in the morning.
2 That is for you to decide.

3 In that regard, what do you look for
4 when you look at a person's testimony to see if
5 he is telling the truth. You look at motive.
6 Sometimes a person who comes to court has a
7 reason to lie. Either he is covering up for
8 himself or others, stands to gain something from
9 telling the story that he is telling. These are
10 factors that you have a right to consider in
11 determining whether a person is telling the
12 truth.

13 The fact that he lied in the past is a
14 factor that you have a right to consider in
15 determining whether a person is telling the
16 truth. The fact that he has been convicted of
17 crimes is a factor that you have a right to
18 consider in determining credibility.

19 On what theory. Not because a person
20 has been convicted of a crime that you must
21 disbelieve. That clearly was told to you in the
22 beginning. You all said, no, you will listen to
23 what he has to say, but it is a factor that you
24 have a right to consider on the theory if a
25 person is willing to place his interests above

1 those of society to the extent of committing
2 criminal behavior, criminal acts that maybe that
3 person is not worthy of belief to the extent that
4 a person who has never been in trouble with the
5 law who comes here with an unblemished record.
6 It is simply a factor that you have a right to
7 consider. That is all we're talking about here.
8 Police officers, their credibility must be
9 treated the same as any other witness that took
10 the stand. They are no better, no worse. You
11 don't believe the cops because they are police
12 officers and you shouldn't disbelief them because
13 they are police officers. You listen to what
14 they have to say. You apply the same common
15 sense, same background that you have considered
16 in determining Gregory Walker's credibility to
17 the police officers. Did they tell the truth
18 with respect to what they did in this case.

19 Now you have heard and there have been
20 examples brought out on cross-examination of what
21 we call conflicting testimony where a witness
22 says one thing here in court and said another
23 thing on a prior occasion.

24 Mr. Walker was confronted on a number
25 of occasions with prior grand jury testimony

1 which appeared to conflict with what he had to
2 say here in the courtroom. The rule of law with
3 respect to that is the following: Wherever in
4 good conscience the juror is able to reconcile
5 conflicting testimony you ought to do so. Why is
6 that. Well, because human nature has taught us
7 that people who come to court to tell you about
8 an incident that took place over two years ago
9 will not remember precisely the same way. Any
10 inconsistencies that you think can be reconciled
11 you are to do that.

12 However, wherever you find an
13 inconsistency that indicates to you that that
14 witness is lying about a material aspect of his
15 testimony, something that is important, not just
16 for example if a witness said a car was black and
17 really turned out to be gray, unless that was
18 very significant in the case, it would not be a
19 material point.

20 If you find that the witness lied about
21 a material aspect of his testimony, you have the
22 right to reject the entire testimony of that
23 witness on the theory if a witness is capable of
24 lying about something important or significant
25 maybe that witness is not worthy of belief at

1 all. You should reject all of his testimony.

2 However, you don't have to do that
3 either. This is what jury duty is all about.
4 You can pick and choose. You can go up in the
5 jury room and say among yourselves do you know, I
6 don't believe that portion of that witness'
7 testimony, but I believe the rest of it. I
8 believe most of it. I believe all of it. I
9 believe none of it.

10 The whole question of how much of each
11 witness' testimony you choose to believe is up to
12 you, the jury. That is what you are here for.

13 In this particular case the Defendant
14 did not take the stand and testify in his own
15 behalf. I told you when you were being selected
16 and I repeat now, that is his constitutional
17 right. He is under no obligation to prove
18 anything. The sole one with the burden of proof
19 is the district attorney and you are not to draw
20 any inference against the Defendant from the fact
21 that he has chosen to exercise his constitutional
22 right.

23 Now, the Defense has raised a question
24 of identification. The district attorney has
25 argued that identification is not really an issue

1 because Mr. Walker said he knew or had met the
2 individual on previous occasions. Knew him as
3 Cilo. That is for you to resolve, but speaking
4 to the issue of identification, it is the
5 district attorney's responsibility in any
6 criminal case to prove the identity of the
7 Defendant as the perpetrator beyond a reasonable
8 doubt.

9 Now, the law tells us that where
10 identification is an issue and that is for you to
11 resolve, that the jury should scrutinize most
12 carefully the question of identification, the
13 validity, reliability of it. Where the
14 possibility of error or a mistake in
15 identification always exists, the jury should
16 examine the evidence produced at trial to satisfy
17 itself beyond a reasonable doubt that this
18 defendant is the right man, that he is in fact
19 the perpetrator of this crime. That must be
20 established to your satisfaction beyond a
21 reasonable doubt.

22 Now the fact that it is established by
23 one person and one person alone is sufficient
24 under the law provided that the jury is convinced
25 beyond a reasonable doubt that that witness is,

1 one, telling the truth; two, accurate and
2 reliable in his identification.

3 Now, if you are going to consider
4 identification what are some of the factors that
5 you should be thinking about or focusing on.
6 Well, certainly, the lighting conditions. This
7 took place 2:30 in the morning behind Waldbaum's
8 in the parking lot and you have heard the
9 witnesses describe the lighting conditions. I'm
10 not going to do that. It is your recollection
11 that controls. Was there sufficient light for
12 Gregory Walker to see what he says he saw. Also,
13 how long did this incident take.

14 Now, I don't believe any particular
15 witness spoke to the precise length of time, but
16 you heard testimony about a car being driven,
17 about someone getting out of the car, about
18 approaching the car, walking around it. Door
19 opening, et cetera. So, I will leave to your
20 common sense and life's experience the fact of
21 time. Time is important. Did the witness have
22 sufficient time, opportunity to observe what he
23 says he said to make a reliable and accurate
24 identification.

25 What kind of incident was it. Well, it

1 is a shooting. Traumatic incident. The witness
2 told you he was in fear. How does that effect in
3 any way his ability to make a reliable and
4 accurate identification.

5 That is for you to determine. Evidence
6 of identification under the law should be clear
7 and convincing in order to sustain a conviction.
8 The jury should examine the eyewitness
9 identification very carefully and be satisfied
10 beyond a reasonable doubt that this is the right
11 person.

12 Now, the crimes charge stem from the
13 fact this defendant was indicted by the Grand
14 Jury of Bronx County. I think it is clear to all
15 of us now that the mere fact that he has been
16 indicted is not evidence. Should not give rise
17 to any inference of guilt.

18 On the contrary, the Defendant is
19 presumed innocent under the law. That
20 presumption of innocence remains with him
21 throughout these proceedings even up to the jury
22 room. When you finally get around your foreman
23 says, okay, we discussed the case. Let's take a
24 vote. If you should come to the conclusion that
25 the defendant's guilt has been proven beyond a

1 reasonable doubt, then he will not longer be
2 presumed innocent because the presumption of
3 innocence will have been overcome by the weight
4 of the evidence. If you are unable to come to
5 that conclusion you must give him the benefit of
6 the presumption of innocence and find him not
7 guilty.

8 Burden of proof. Well I think it is
9 rather clear that the burden of proof is solely
10 and exclusively on the district attorney. The
11 Defendant does not have to prove that he is
12 innocent. It is the district attorney's job to
13 prove that he is guilty and to what degree must
14 he prove it, beyond a reasonable doubt.

15 What do we mean by that phrase. Well,
16 you have heard it I am sure many, many times. A
17 reasonable doubt is a doubt that is based on
18 reason. It is not a guess or whim on the part of
19 a juror. No juror should go upstairs and say,
20 well, I have a doubt. I don't know, I can't give
21 you any reason for it. I don't know why I have
22 it, but I have a gut feeling in the pit of my
23 stomach and that is my doubt. That is not a
24 reasonable doubt.

25 A reasonable doubt is one that rises

1 from the evidence or lack of evidence in the
2 case. It is one for which a juror can give a
3 reason if called upon to do so in the jury room.
4 Not to us. You don't owe me or the lawyers any
5 explanation whatsoever for your verdict. That is
6 between yourselves, but if one juror should say
7 up in the jury room I have a reasonable doubt,
8 the other jurors would have a right to turn to
9 that person and say well, share it with us.
10 Perhaps we will agree with you. What is it based
11 on. If, vice versa, the juror says I have no
12 reasonable doubt. I am satisfied that he is
13 guilty. Other jurors would have a right to ask
14 that one for his explanation or her explanation.
15 As to how you come to that conclusion. That is
16 the process of give and take that goes on in the
17 jury room where each juror expresses his or her
18 feelings in an effort to arrive at a fair and
19 just verdict.

20 The district attorney is not required
21 to prove the guilt of the Defendant to a
22 mathematical certainty or beyond all doubt. Why
23 is that. Well, you are dealing with human
24 beings. Human beings are fallible. We can
25 conjure up a doubt under any circumstances. It

1 is not any doubt that will suffice. It must be a
2 reasonable doubt. The kind of doubt that a
3 reasonable person would have after going over the
4 evidence in this case.

5 That brings us to the one count,
6 charge, you will be considering up in the jury
7 room. That is murder in the 2nd degree.

8 The Defendant, Antonio Mallet, on or
9 about September 24, 1996, in the County of the
10 Bronx, with intent to cause the death of a person
11 did cause the death of Michael Ledeatte by
12 shooting him.

13 The Penal Law of State of New York
14 defines murder in the 2nd degree in almost the
15 same language, with one sentence.

16 "A person is guilty of murder in the
17 2nd degree when with intent to cause the death of
18 another person he causes the death of such
19 person."

20 What must the People or the assistant
21 district attorney have to prove beyond a
22 reasonable doubt in this case.

23 Well, he must prove beyond a reasonable
24 doubt that on September 24th, 1996, in the Bronx,
25 in that lot that this Defendant, no one else but

1 this Defendant shot Michael Ledeatte. At the
2 time that he shot him, he intended to kill him
3 and that it was in fact that very shooting that
4 killed him. That is what the D.A. must prove.

5 Well, you may say, Judge, they talked
6 about intent. How do we know what he intended.
7 Well, it is a good question. We can't open up
8 his head to examine the contents of his head to
9 see what he intended, but you can look at the
10 deed accomplished; what did he do and from those
11 facts you may infer what a person intends.

12 Did he in fact take a gun loaded with
13 ammunition point it at Mr. Ledeatte's head and
14 fire from a distance of some two feet, that
15 bullet entering his head passing through his
16 brain thereby killing him.

17 If he did that, if Mr. Mallet did that
18 what are you able to determine was his intent.
19 The intent to kill, kill Mr. Ledeatte must be
20 proven beyond a reasonable doubt.

21 Now, there has been some talk of
22 motive.

23 Let me go back and discuss motive with
24 you for a moment.

25 Motive must be distinguished from

1 intent. Motive is not a necessary element of a
2 crime or of this crime, while intent is. The
3 intent to kill must be proven beyond a reasonable
4 doubt. Beyond a reasonable doubt. Motive is the
5 reason or purpose one has in pursuing a
6 particular action. Intent is the desire or the
7 will to bring it about, not the motivation behind
8 it.

9 In this case you may not ever be able
10 to determine what motive there was, if any. You
11 are not required to prove motive beyond a
12 reasonable doubt.

13 By the same token, as counsel has
14 properly indicated in his summation, the lack of
15 motive is something that you have a right to
16 consider in determining whether the evidence
17 proves the case beyond a reasonable doubt. Not
18 that it is required to be proven, but the fact
19 that you don't have it might create a reasonable
20 doubt in your minds, but it is not an element of
21 the crime.

22 The elements that must be proven beyond
23 a reasonable doubt are not complicated. They are
24 simple. That it was this Defendant who fired the
25 shot that killed Mr. Ledeatte while intending to

1 kill him. You may never know the reason why he
2 intended to kill him, but you are convinced
3 beyond a reasonable doubt that he did in fact
4 shoot him with an intent to kill him. If you are
5 then you should find the Defendant guilty of the
6 crime of murder in the 2nd degree.

7 If you have a reasonable doubt as to
8 whether he is the right guy, whether he is the
9 one who shot him, not guilty. If you have a
10 reasonable doubt as to whether he intended to
11 kill him, not guilty.

12 If you have a reasonable doubt as to
13 whether or not it was that bullet that killed
14 him, not guilty.

15 That, ladies and gentlemen constitutes
16 the Court's instructions on the law.

17 I am going to take the lawyers aside
18 here for a moment with court reporter to see if
19 they have any last minute requests or exceptions
20 to the Court's instruction and then you can go
21 upstairs and commence your deliberations.

22 (Whereupon, following proceedings take
23 place at the side bar between the court and
24 parties.)

25 THE COURT: Any requests or exceptions

1 by the People.

2 MR. PIACENTILE: I renew my request for
3 man one, Judge. Other than that, no.

4 THE COURT: All right. We already
5 discussed that, right. Defense asked no other
6 charge be submitted. I ruled on it. I will
7 stick by the ruling.

8 MR. SCHNEIDER: I have a couple.

9 THE COURT: Requests or exceptions by
10 Defense.

11 MR. SCHNEIDER: Yes. A couple if I
12 may.

13 THE COURT: Take your time.

14 MR. SCHNEIDER: When we spoke yesterday
15 about the identification charge I believe your
16 Honor today inadvertently left - - you did
17 discuss lighting, timing, opportunity to observe
18 and type of incident. Your Honor did not
19 discussed distance or lack of a prior description
20 and whether or not that description, if given,
21 matches the Defendant. You did not do that
22 today.

23 I would ask that be included.

24 Finally regarding beyond a reasonable
25 doubt charge, you did indicate that the jurors

1 are required if asked in the jury room while not
2 to us as parties, but to other jurors. They are
3 required to verbalize or give a reason if they
4 have a doubt.

5 I don't believe that is the standard.
6 I believe they are required to have a reasonable
7 doubt or one they maybe able to articulate to
8 themselves. They are not required to articulate
9 it to others. I think that is inappropriate.

10 That my exception to that portion.

11 THE COURT: Yes. You are referring to
12 a Court of Appeals case that had language of that
13 nature. One, that case was not a holding of that
14 case. The charge I just delivered to the jury
15 has been approved since then a number of times.
16 I think it is an appropriate charge. You have an
17 exception.

18 MR. SCHNEIDER: Thank you, your Honor.

19 THE COURT: I decline to further
20 elaborate on identification. While it is true I
21 did not discuss those, I did discuss those things
22 with you yesterday. I don't want you to think
23 you are sandbagged. I don't have a traditional
24 Horne Book charge. I adlib my charges as you
25 were able to notice while those are factors the

1 jury may consider, to highlight them now would be
2 inappropriate. I told the jury they should
3 consider whatever factors they think are
4 appropriate in coming to the conclusion that the
5 identification is accurate and reliable. I stand
6 buy it.

7 MR. SCHNEIDER: I didn't mean to imply
8 that you sandbagged me.

9 THE COURT: No. I used that
10 expression. I withdraw it. You are too of a
11 professional lawyer to even suggest anything of
12 that nature. I'm not overly paranoid or
13 sensitive to think that you had that in mind.

14 MR. SCHNEIDER: I have that exception.
15 I stand by your Honor's ruling.

16 THE COURT: All right.

17 (Whereupon, the following proceedings
18 take place in open court.)

19 THE COURT: Ladies and gentlemen, you
20 are about to go upstairs to commence your
21 deliberation. We ordered lunch for you. Has it
22 arrived yet.

23 COURT CLERK: It is here.

24 THE COURT: It is time to eat.

25 Go upstairs, enjoy your lunch before

1 you even start your deliberations.

2 There were a number of exhibits
3 received in evidence. I will collect them while
4 you go upstairs. All you need do is send us a
5 note saying, Judge, we would like to see the
6 exhibits and they will be sent up to the jury
7 room.

8 You are to go about your deliberations
9 until you arrive at a unanimous verdict where
10 all twelve of you agree one way or the other.

11 If you need further instructions from
12 me or a clarification on anything that I may have
13 told you simply send me a note. I will bring you
14 back and we will try to answer your question.

15 Never are you to tell me how you stand
16 in jury room. Don't send me a note saying we are
17 eleven to one and someone is being stubborn.
18 That is not my business. That is yours.

19 You come back when you have a unanimous
20 verdict where all twelve of you agree.

21 All right, good luck.

22 COURT OFFICER: Jurors step this way.
23 Alternate wait right there.

24 (Whereupon, the jury panel leaves the
25 courtroom to commence deliberations.)

1 THE COURT: I will collect exhibits as
2 I always do after trial.

3 (Discussion held off the record between
4 the Court and attorneys.)

5 On the record.

6 We have People's one, through nine are
7 photographs.

8 MR. PIACENTILE: Photographs.

9 THE COURT: People's ten is the chart
10 with the streets. People's eleven is a blow up
11 sketch of the scene. People's twelve is the
12 plastic bag with the pliers. Thirteen is the
13 lineup photo.

14 COURT CLERK: Correct.

15 MR. PIACENTILE: Fifteen, your Honor.

16 THE COURT: What happened to fourteen.

17 MR. PIACENTILE: Fourteen is the M.E's
18 report. Never put in evidence.

19 THE COURT: All right. Fifteen is the
20 photo of the Lexus. That constitutes People's
21 exhibits.

22 My recollection serves me correctly
23 defense has none.

24 MR. SCHNEIDER: That is correct, your
25 Honor.

1 THE COURT: All right.

2 Counsel can we have an agreement that
3 if the jury requests the exhibits they maybe sent
4 upstairs with without the necessity reconvening
5 in court.

6 MR. SCHNEIDER: Yes.

7 MR. PIACENTILE: Your Honor, one
8 application.

9 THE COURT: Let me finish this first.

10 Further understand you will not consent
11 to the alternate substituting for any of the
12 deliberating jurors once they commence there
13 deliberations?

14 MR. SCHNEIDER: That is correct, your
15 Honor.

16 THE COURT: The alternate is excused.

17 (Alternate excused.)

18 THE COURT: Hear your application.

19 MR. PIACENTILE: Your Honor, my
20 application at this time now that the jury is
21 actually deliberating, on the verge of a verdict,
22 that defendant be remanded pending outcome of
23 deliberations.

24 THE COURT: All right. I understand
25 the application. My feelings are this case was

1 sent to me for trial after some two and a half
2 years of pendency. He has been here in this
3 court now since the 8th. He has been promptly
4 here every day. Before the Court even arrived.
5 I understand that there are no warrants that have
6 been issued during the pendency of this case.

7 That being the case, the Court will
8 continue the Defendant on bail.

9 MR. SCHNEIDER: Thank you, your Honor.

10 THE COURT: All right. Stick around
11 the courtroom. Don't get lost.

12 (Whereupon, there was a luncheon
13 recess taken.)

14 (Transcript continued on next page. . .)

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There are no pages numbered 522-525.

1 (At 4:15 the jury enters the courtroom.)

2 COURT CLERK: Your Honor, please note for the
3 record the Defendant is present, his attorney is present,
4 the assistant district attorney is present and also present
5 are our twelve jurors and one alternate having been excused.

6 Note for the record we have received two notes
7 from the jury, they're marked Court's Exhibits Number II and
8 III.

9 THE COURT: All right. The notes, the first note
10 requests the pictures and the sketch of the parking lot with
11 the car. We've complied with that.

12 The second note says, "We would like to hear the
13 witness testimony, Gregory Walker."

14 Now you didn't specify what it is that you wanted
15 to hear so I'm not going to ask you. All I can suggest to
16 you is the following:

17 We're going to read the transcript back. You're
18 the foreman of the jury, Mr. Pellew is it? And you're in
19 the juryroom so you know what's going on.

20 If we should reach a point during the readback
21 where you feel that the questions that have been put by your
22 fellow jurors have been answered, then raise your hand and
23 we'll stop, so you can continue your deliberations.
24 Otherwise we'll read it in its entirety. Do you understand?

25 THE FOREMAN: Yes.

1 THE COURT: And even if you should reach that point
2 where you think that you've solved your needs, you can
3 consult with your other fellow jurors to see if anybody
4 wants further read back. Okay?

5 MR. SCHNEIDER: Your Honor, may we approach?

6 THE COURT: No. This is my province. Later on
7 you'll be able to make a record for yourself.

8 MR. SCHNEIDER: Okay.

9 THE COURT: Okay, Kenny. I'm going to start so
10 you can relax for a little while, get your voice ready
11 because you'll pick up when I run out of gas.

12 (The judge commences reading of the direct
13 testimony of Mr. Walker.)

14 THE FOREMAN: Your Honor, we've heard enough.

15 THE COURT: You've heard enough? All right. Then
16 I will ask you to step out here, there's a lot more
17 testimony, there's cross-examination, if any of the jurors
18 want to hear more testimony, I'm going to ask you to tell
19 the officer, we'll bring you back in and we'll read some
20 more testimony.

21 If all of the jurors agree that you have heard
22 enough testimony to continue your deliberations, then you
23 tell the officer that, "We're going to continue our
24 deliberations." Okay?

25 So any juror who feels he or she wants more

1 testimony, you simply tell the foreman and he'll report to
2 the Court. Thank you.

3 (The jury exits the courtroom at 4:30 P.M.)

4 THE COURT: Mr. Schneider, you want to make a
5 record?

6 MR. SCHNEIDER: Yes, your Honor, if I may. I
7 don't want to be accused of hyberbole, but I have to
8 strenuously object to your Honor's direction to the jurors
9 before you began your readback.

10 I think it was highly inappropriate for your Honor
11 to give the foreperson, who has no greater power than any
12 other juror in this case except that he or she signs the
13 notes, that's all he's supposed to do, to give him the power
14 to decide what is or is not enough in his unilateral
15 decision--

16 THE COURT: It's not, and I haven't given him that
17 power.

18 MR. SCHNEIDER: Well, you gave him the power to
19 say 'enough' and then to go back and question jurors again
20 to see if they want to come back.

21 I think, given the fact that he had that option,
22 that he had that right initially was inappropriate.

23 There was a very clear question for the jurors.
24 They wanted to hear the testimony of the witness Gregory
25 Walker. They didn't say direct, they didn't say cross, they

1 didn't say individual parts.

2 THE COURT: There was also a very, very direct
3 response by the foreman that he had heard enough and that
4 was, by the way, I don't know if you were observing the jury
5 at the time, that was not a unilateral decision on his part.
6 He turned to the other jurors who indicated to him that they
7 had heard enough.

8 MR. SCHNEIDER: That was the second portion of my
9 objection, which was that your Honor said, initially, that
10 the--

11 COURT SERGEANT: Your Honor, the jury is entering
12 for more testimony.

13 THE COURT: Sure. Bring them in.

14 (The jury enters courtroom at 4:33 P.M.)

15 THE COURT: I understand more jurors want the
16 testimony continued. Is that correct?

17 THE FOREMAN: Yes.

18 THE COURT: All right. The same instruction, I
19 will read the testimony to you and when you've heard enough
20 to continue with your deliberations, you simply--we are here
21 now, the Court, counsel, to serve you. We're not here to
22 make you listen to the entire trial read back, although
23 we're willing to do that if it's necessary.

24 But if you feel that once you have heard enough to
25 permit you to continue your deliberations, there's no need

1 for you to be captive and forced to listen to testimony that
2 isn't necessary. Okay? All right.

3 Now let's see where I was.

4 MR. PIACENTILE: I believe line 13, judge, page
5 107.

6 THE COURT: All right. Let me continue.

7 (Judge continues reading from the transcript.)

8 THE FOREMAN: Excuse, me sir. We've heard enough,
9 enough of it.

10 THE COURT: Okay.

11 Juror number two? Have you heard enough?

12 JUROR NUMBER TWO: Yes.

13 THE COURT: Juror number three?

14 JUROR NUMBER THREE: Yes.

15 THE COURT: Juror number four?

16 JUROR NUMBER FOUR: Yes.

17 THE COURT: Juror number five?

18 JUROR NUMBER FIVE: Yes.

19 THE COURT: Juror number six?

20 JUROR NUMBER SIX: Yes.

21 THE COURT: Juror number seven?

22 JUROR NUMBER SEVEN: Yes.

23 THE COURT: Juror number eight?

24 JUROR NUMBER EIGHT: Yes.

25 THE COURT: Juror number nine?

1 JUROR NUMBER NINE: Yes.

2 THE COURT: Juror number ten?

3 JUROR NUMBER TEN: Yes.

4 THE COURT: Juror number eleven?

5 JUROR NUMBER ELEVEN: Yes.

6 THE CLERK: Juror number twelve?

7 JUROR NUMBER TWELVE: Yes.

8 THE COURT: All right. So all the jurors have
9 agreed they can now continue their deliberations without any
10 further reading of the testimony.

11 If at any time when you get upstairs you feel you
12 need to hear more, you want to hear more, you want to hear
13 cross-examination, just tell us, we'll bring you back down
14 and we'll read it to you.

15 You may resume your deliberations.

16 (The jury exits the courtroom at 4:50 P.M.)

17 THE COURT: Mr. Schneider?

18 MR. SCHNEIDER: Yes, your Honor. I would like to
19 continue and renew my objection to your Honor's instructions
20 to the jurors.

21 In addition to feeling that it's inappropriate to
22 tell the foreperson to make that decision, even though your
23 Honor then basically polled the jurors the second time, I
24 think it's also improper to have the jurors either consult
25 with themselves either verbally or by eye contact or even to

1 make a decision now. That's a violation of their ability to
2 deliberate and to respond to the note.

3 So based on the note, based on your Honor's
4 instructions, I have an application for a mistrial, your
5 Honor.

6 THE COURT: Your application is denied. Okay.

7 (Please note that the verdict sheet was received
8 and marked Court's Exhibit Number I.)

9 (Two notes from the jury are received and marked
10 Court's Exhibits Numbers II 2 and III.)

11 (Continued on following page.)
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There are no pages numbered 533 and 534.

1 (At 6:20 the jury enters the courtroom.)

2 (Note from jury announcing a verdict is received
3 and marked Court's Exhibit Number IV.)

4 COURT CLERK: Okay. Case on trial continues. Note
5 for the record that the Defendant is present, his attorney
6 is present, the assistant district attorney is present and
7 also present are our twelve jurors and note for the record
8 we have received another note from the jury, received and
9 marked Court's Exhibit Number IV.)

10 THE COURT: Yes. I reviewed your note and the note
11 indicates the jury has reached a verdict.

12 The clerk will now proceed to take the verdict.

13 COURT CLERK: Mr. Foreman, please rise.

14 Mr. Foreman, have you and your fellow jurors
15 agreed upon a?

16 THE FOREMAN: Yes.

17 COURT CLERK: As to the first and only count
18 charging the Defendant, Antonio Mallet, with the crime of
19 Murder in the Second Degree, how do you find the Defendant,
20 guilty or not guilty?

21 THE FOREMAN: Guilty.

22 COURT CLERK: Thank you, Mr. Foreman. Please be
23 seated.

24 THE COURT: Mr. Schneider, do you wish to have the
25 jury polled?

1 MR. SCHNEIDER: Yes, please.

2 THE COURT: Poll the jury.

3 COURT CLERK: Okay. Ladies and gentlemen of the
4 jury, you have spoken through your Foreman saying that you
5 find found the Defendant, Antonio Mallet, guilty of the
6 crime of Murder in the Second Degree.

7 Juror number one, is that your verdict?

8 JUROR NUMBER ONE: Yes.

9 THE CLERK: Juror number two, is that your
10 verdict?

11 JUROR NUMBER TWO: Yes.

12 THE CLERK: Juror number three, is that your
13 verdict?

14 JUROR NUMBER THREE: Yes.

15 THE CLERK: Juror number four, is that your
16 verdict?

17 JUROR NUMBER FOUR: Yes.

18 THE CLERK: Juror number five, is that your
19 verdict?

20 JUROR NUMBER FIVE: Yes.

21 THE CLERK: Juror number six, is that your
22 verdict?

23 JUROR NUMBER SIX: Yes.

24 THE CLERK: Juror number seven, is that your
25 verdict?

1 JUROR NUMBER SEVEN: Yes.

2 THE CLERK: Juror number eight, is that your
3 verdict?

4 JUROR NUMBER EIGHT: Yes.

5 THE CLERK: Juror number nine, is that your
6 verdict?

7 JUROR NUMBER NINE: Yes.

8 THE CLERK: Juror number ten, is that your
9 verdict?

10 JUROR NUMBER TEN: Yes.

11 THE CLERK: Juror number eleven, is that your
12 verdict?

13 JUROR NUMBER ELEVEN: Yes.

14 THE CLERK: Juror number twelve, is that your
15 verdict?

16 JUROR NUMBER TWELVE: Yes.

17 COURT CLERK: Thank you, jurors. Your verdict
18 stands recorded.

19 THE COURT: Ladies and gentlemen, I want to thank
20 you for having served as jurors and for having what I
21 believe to be a fair and just verdict. You're excused.

22 (The jury exits the courtroom at 6:25.)

23 A WOMAN: (From the audience:) Thank you, ladies
24 and gentlemen.

25 MR. PIACENTILE: Your Honor, I am asking the

1 Defendant be remanded pending sentence.

2 THE COURT: I have no choice. He's remanded.

3 MR. SCHNEIDER: Your Honor, if I may I would just
4 like to reserve any post-conviction motions?

5 THE COURT: Sure. How's April the 29th for you?

6 MR. SCHNEIDER: That sounds good.

7 THE COURT: Do you want a different day?

8 MR. SCHNEIDER: No, your Honor. That's fine.

9 MR. PIACENTILE: Thank you, your Honor.

10 THE COURT: All right. April 29th for sentence.

11 (These trial proceedings are concluded.)
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This is to certify that the foregoing is a true and accurate
15 transcript of the stenographic minutes taken within.

16 *Kenneth A. De Corso*

17 KENNETH A. DE CORSO, C.S.R.

Senior Court Reporter
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INDICTMENT NUMBER 7180-96

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX : I.A.S. TERM PART 31

-----X
:
THE PEOPLE OF THE STATE OF NEW YORK,
: - against -
: SENTENCE
ANTONIO MALLETT,
:
Defendant.
:
-----X

851 Grand Concourse
Bronx, New York
September 23, 1999

FILED

SEP 28 2016

B E F O R E :
HONORABLE LAWRENCE TONETTI
Justice of the Supreme Court

SUP COURT, APP. DIV.
FIRST DEPT.

A P P E A R A N C E S :
ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
BY: JEROMEY SHOCKET, ESQ.

STUART D. RUBIN, ESQ.
Attorney for Defendant
26 Court Street
Brooklyn, New York

Gerald Beattie
Senior Court Reporter

1 COURT CLERK: This is number five on the sentence
2 calendar, indictment 7180 of '96, Antonio Mallett. A
3 sentencing matter.

4 Defendant is produced in court.

5 Counsel, your appearance.

6 MR. RUBIN: On behalf the Defendant
7 Stuart Rubin, 26 Court Street, Brooklyn.

8 MR. SHOCKET: Jeromey Shocket representing the
9 Bronx District Attorney's Office.

10 Good afternoon.

11 THE COURT: Counsel, a 330 motion was made by the
12 Defendant in this case.

13 Mr. Rubin.

14 MR. RUBIN: Yes, your Honor.

15 THE COURT: It was your motion. Answered by the
16 People. The Court reviewed the papers.

17 The decision of the Court is down in the Clerk's
18 Office. Apparently you have not receive a copy. They will
19 mail it to you, counsel.

20 Basically the Court did not go into any great
21 lengths in writing a decision. It is my considered opinion
22 that after reviewing the papers that all of the issues that
23 were raised in the 330 motion were questions that came up
24 during the course of the trial that the Court really had
25 ruled on all of those questions.

1 I believe that they are the basis obviously of an
2 appeal. They serve for my opinion no reason for me to set
3 aside that verdict and accordingly the motion is denied.

4 Defendant ready for sentence?

5 MR. RUBIN: Yes.

6 COURT CLERK: Antonio Mallett, you are arraigned
7 for sentence now on indictment number 7180 of 1996, wherein
8 you were tried found guilty by a jury of the crime murder
9 in the 2nd degree.

10 Now, before the Court pronounces judgment in this
11 matter the assistant district attorney will be given an
12 opportunity to address the Court with regard to your
13 sentence.

14 Your attorney will then be given opportunity to
15 address the Court with regard to your sentence and lastly
16 you will be given a chance to speak to the Court if you
17 wish to.

18 Mr. Shocket.

19 MR. SHOCKET: Your Honor, on behalf the
20 Bronx County District Attorney I would like
21 to make the follow brief statement. I would
22 like the Court to be aware family of the
23 deceased Michael LeDeatte is present. His
24 mother, Bernice LeDeatte, would like to make
25 brief statement to the Court whenever the

1 Court deems it appropriate.

2 THE COURT: Hear her, yes.

3 MR. SHOCKET: Your Honor was the
4 presiding Judge. I was not the trial
5 attorney in the case. Victor Piacentile
6 tried this case.

7 The family mentioned that your Honor
8 sentence the Defendant to a maximum sentence
9 under the law of twenty-five years to life in
10 view of the fact that the Defendant basically
11 executed the victim by firing a shot once
12 into his head in the rear of a parking lot in
13 the middle of the night in the Bronx.

14 No matter what shortcomings the victim
15 had in his life he did not deserve to die in
16 the back of a parking lot at the Defendant's
17 hand.

18 The victim was not armed. He didn't fight. He
19 was shot and executed.

20 Defendant's callous, complete disregard for life
21 shows to this court he deserves the maximum sentence
22 allowed by law which is twenty-five years to live.

23 Mrs. LeDeatte. Bernice LeDeatte.

24 COURT CLERK: Give us your name for the record.

25 MRS. LEDEATTE: Bernice LeDeatte. I am the mother

1 of Michael LeDeatte.

2 THE COURT: Who is THE it youngman
3 standing next to you.

4 MRS. LEDEATTE: Jamal LeDeatte, son.

5 My brother's father; his father.

6 THE COURT: Mrs. LeDeatte, do you wish to say
7 anything?

8 MRS. LEDEATTE: Your Honor, at that time on
9 September 24th of 1996 my life was turned up side down
10 because of Antonio Mallett. He take my son's life. Very
11 tragic movement. For me every day to watch my son in the
12 cemetery, your Honor.

13 I ask you to please don't give no mercy to this
14 man. Give him the maximum sentence so he can experience at
15 least what he have done to my son.

16 Your Honor, please, no mercy on this man. I
17 begging you at this point because he took my son away from
18 me. At this moment it is very heart broken. I am living
19 on the 24th of September. Tomorrow will be three years
20 since my son left my arms.

21 Your Honor, I have to re-live the 24th of
22 September for what he has done to my son.

23 If your Honor please, take him off the street so
24 he don't make another mother feel the way I feel this
25 morning because he is capable to do it again. Thank you.

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THE COURT: Anybody else?

MR. J. LEDEATTE: I hope he'll get what he deserve and go to jail. Hope he never live too see daylight again.

That is all.

MR. LEDEATTE: I have the same feelings, your Honor.

THE COURT: Mr. Rubin.

MR. RUBIN: Your Honor, I don't think I would be out of line to state that after conversations with Mr. Schneider who did the trial for the defendant, Mr. Piacentile who did the trial for the People, after reading the transcript of this case, based upon my own experience as a prosecutor and defense lawyer, I did a lot of trials, did a lot of murder cases. This is the thinnest murder case I have seen which resulted a conviction. No a scintilla of evidence other than Mr. Walker whose initial statements to the police were at variance with his trial testimony in the precinct. In the morning they let him go home. Coming back in the afternoon, hold him for six hours. At that point in time he says the person who did it. Gives a nickname for my client. Person he has seen before at a used auto business in connection with the decedent's continuing course of auto larceny. That was it.

There was nothing else to connect my client that

1 I saw in this record. I read every word of the record. I
2 don't think there was anything else that the People's
3 investigation showed that pointed to my client.

4 Certainly a jury is entitle to believe or not
5 believe. A court can also find that a witness is
6 inherently incredible in a very thin case. The reason I
7 filed a 30.30 part of the issue on appeal is harmless error
8 could not apply to it.

9 I know your Honor's intention was not to --
10 certainly was to give a fair trial. There was a lot of the
11 type of evidence, hearsay that came into the case. I think
12 that hurt my client substantially. If this Mr. Walker got
13 up and said I was there in the parking lot. I saw Rudolph
14 Guliano pull the trigger there would not have been an
15 arrest in this case. He used my client's name and the rest
16 is history.

17 Certain categories of people that would be
18 prosecuted. Others might not. Might cause further
19 investigation even looking into by the police department
20 for exculpatory evidence rather than to just close out
21 case. Be done with it. See if we can sell it to a jury.
22 That indeed they did.

23 In this category of case where a felony, several
24 open cases, someone who is admittedly at the scene of a
25 homicide in process of committing a felony is brought into

1 a precinct, makes a statement two years later, reiterates
2 that statement in front of the jury.

3 If you do that in a hundred cases you will have
4 wrongful convictions. I don't at all criticize the family.
5 Certainly they witnessed the trial. This is there guy in
6 terms of the perpetrator based on the evidence here and
7 their anguish is unspeakable.

8 THE COURT: Sure.

9 MR. RUBIN: They have no idea who shot their son.
10 Only know what Gregory Walker has said. This is a chance.
11 This is a wrongful conviction. A jury spoke. That does
12 not mean it was truthful. Death penalty case gets
13 investigated to the maximum after a conviction. These type
14 of cases are frequently reversed on the facts. On these
15 type of cases it is much more difficult.

16 Needless to say, we don't know what happened to
17 Mr. Walker. Why it was that he absented himself. We know
18 people don't like to be involved in homicide trials. That
19 maybe the reason. There may have been other considerations
20 we are not aware of. We are continuing to investigate the
21 underlying facts of the case just because it is a thin
22 case. It was a homicide here. Generally speaking there is
23 something that connects the Defendant other than mere
24 words. Nothing to corroborate even that Mr. Walker ever
25 laid eye on my client than that used auto employee that he

1 testified about.

2 In that sense it is a scary case from a defense
3 prospective. It is scary. What can we do to try to
4 reverse a conviction with all the power that a jury verdict
5 really carries.

6 In any event, my client appears here today with
7 no criminal history whatsoever. The fact that Mr. Walker
8 said he was involved in auto larceny does not make it true.

9 Never been convicted of that. The only thing the
10 court knows in my view about his activities with law
11 enforcement is cooperation. Cooperation with the U.S.

12 Marshalls. They spoke to who were looking
13 for my client who were to my client's
14 childhood. He helped those people.

15 Maybe my client should have testified. He tells
16 me he wanted to testify. That maybe the subject of further
17 motion in this court.

18 It was a homicide. He gets wind they are looking
19 for him and he surrenders voluntarily to the precinct the
20 next day. These are not the actions of a cold blooded
21 killer the night before. There are substantial questions
22 of guilt in the case.

23 How do I appeal to a court then that has to look
24 at the system and the jury verdict and has a verdict, a
25 verdict that is based upon the testimony of basically an

1 assassination of a young man, whether a car thief or
2 whatever he is, comes almost not completely irrelevant.
3 Not completely irrelevant.

4 The bodega owner who is working the twenty-four
5 hour shift who has three kids in parochial school doing
6 every single thing he can, comes to the country
7 immigrating, trying to do the right thing, that is the
8 maximum sentence with a continual course of conduct
9 committing felonies at the time of his death.

10 That is, if a maximum sentence is indicated for
11 someone with no criminal history whatsoever because, number
12 one, I don't think that the anguish of a family. Certainly
13 an auto larceny many people would consider de minimis.
14 Particularly a family member for the death of a young man
15 who may have stopped his larcenous career and gone on doing
16 who knows what. He raised a legitimate family.

17 This person has as much potential as somebody
18 else. I don't hold it against him. I do not suggest he
19 deserved to die. Not what I am suggesting at all, but this
20 is not a maximum sentence case. It is not a maximum
21 sentence case because of the thinness of the evidence that
22 this person standing before the court maybe innocent.

23 It is not a maximum sentence case because the
24 deceased was committing a felony at the time of his death.

25 Not a maximum sentence case because my client has

1 not any contact with the criminal justice system before.

2 For all those reasons I ask you to sentence the
3 Defendant to fifteen years to life which is the minimum
4 somebody gets. The minimum. It not a first time offender
5 who is accused and convicted of shooting somebody who is in
6 the course of his occupation which is committing felonies
7 on a daily basis at the time of his death.

8 I suggest that it calls for a minimum sentence.
9 I ask you to sentence him to fifteen years to life under
10 these circumstances.

11 COURT CLERK: Mr. Mallett, do you wish to saying
12 else to the Judge?

13 THE DEFENDANT: No, sir. I am innocent. That is
14 it. One case has to be proven. Until then I have to wait
15 it out. That is it. I am innocent.

16 THE COURT: The difficulty with many of the
17 things you said counsel, you have made a very impressive
18 statement on behalf your client, by way of reading of the
19 record which provides one with a view that to the court is
20 different than seeing the actual witness testify before the
21 jury, they are very different prospects.

22 I presided over the trial. I have no question in
23 my mind that the verdict that was rendered by the jury in
24 this case was amply supported by the evidence introduced at
25 this trial. I don't know that he is guilty. I don't know

1 that. I wasn't there, but what I am suggesting to you is
2 that reading the record as a professional that is what you
3 have done.

4 You weren't here during the course of the trial.
5 It was tried by Mr. Schneider who tried the case very ably
6 by the way, very able lawyer. Reading that record doesn't
7 give you the prospective that I have had by presiding over
8 the trial and listening to this witness testify and
9 observing him, reaction the jury came to.

10 I recall that one of the issues that counsel
11 raised which you have just relied upon, he cross-examined
12 this witness with respect to the discrepancies in the
13 statement and at some point the detective indicated or made
14 it clear to the jury that he did not believe the witness
15 during the first examination of that witness. Of course,
16 Mr. Schneider just jumped all over that on the theory
17 because he was lying to that he would convince the jury to
18 see this witness was unreliable, but it had the reverse
19 affect.

20 With all due respect to Schneider's strategy what
21 it did was show rather clearly to the jury this was an
22 experienced detective who realized from the very beginning
23 that this witness was not being forthright. Just kept
24 probing until what he thought was the truth. That was
25 Schneider's point to what the detective wanted to hear from

1 him and yet that is not the way it came out to the jury.

2 The way it came across was this fellow who did
3 not want to get involved in the beginning was trying to
4 avoid having to appear as a witness. Finally had to just
5 breakdown and tell what he believed he saw. That is the
6 way it came across. Came across very persuasive to the
7 jury. This is not a thin case at all in the jury's
8 prospective. It is thin in the record. All you have is
9 this one witness who is a felon, had a criminal record and
10 did lie to the police initially. So it looks thin.

11 Professionally speaking the way it came out in
12 the trial was devastating. I wasn't surprised one bit.
13 Not only that, but the rapidity of the verdict was
14 astonishing. The jury went out. Jury came back and made a
15 verdict which is that quick. We were all shocked. To some
16 extend usually quick verdicts are defense verdicts.

17 MR. RUBIN: I failed to mention earlier
18 something. I hope the court could consider on sentence the
19 respect my client showed for the court during the pendency
20 of this indictment which took over two years to get to
21 trial. He was out. Remained out. Court let him out. He
22 would return for the entire trial but for the verdict as
23 well he was out during jury deliberations. He also was a
24 voluntary surrender in the case.

25 THE COURT: I do appreciate all that. I do.

1 This case was not mine. I know the history of the case.
2 It was referred to me for trial. Who was the judge.

3 COURT CLERK: Judge Collins.

4 THE COURT: Judge Collins had it for two years.
5 It was referred to me to try it. That is what I did. I
6 think that as I indicated to you that the evidence that was
7 submitted to this jury well warranted the verdict. That
8 doesn't mean he is guilty. That is the tragic aspect. I
9 don't know if he is guilty, having done this too long I
10 just don't know.

11 I think the verdict is substantially warranted by
12 the evidence that was adduced in this case. Otherwise I
13 would set it aside.

14 I do appreciate the argument that you have made
15 with respect to the deceased. However, that doesn't change
16 the anguish of the family as you well acknowledged. He
17 doesn't have to be man of the year for them to feel the
18 grief of their lost.

19 All things considered it is the sentence of this
20 court on the Defendant's conviction for murder 2nd degree
21 committed for an indeterminate period the maximum which
22 will be life and the minimum which shall be twenty years.

23 There is a mandatory surcharge and victim service
24 fee.

25 COURT CLERK: Mr. Mallett, you have right to

1 appeal the judgment of the Court. If you wish to do so it
2 must be taken within thirty days. If you need an attorney
3 and cannot afford one the Appellate Division will assigned
4 one to you and furnish you with a transcript.

5 Mr. Rubin, remain on the case for thirty days?

6 MR. RUBIN: Yes. I will file a notice of appeal.

7 COURT CLERK: Let the record note the Defendant
8 has been handed a written copy of his notice of his right
9 to appeal.

10 oOo

11 CERTIFIED TO BE A TRUE AND CORRECT
12 TRANSCRIPT OF MINUTES IN THIS CASE

13 Gerald Beattie
14 Gerald Beattie
15 Senior Court Reporter
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EXHIBIT B

AFFIDAVIT OF GREGORY WALKER

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, Gregory Walker, affirm and declare this 6th day of July, 2019, under the penalties of perjury under the laws of the United States of America and the State of New York, as follows:

1. My name is Gregory Walker. I am 45 years old and I currently reside in [REDACTED] Florida.
2. I am making this affidavit with the understanding that it may be used in a proceeding involving Antonio Mallet.
3. I am making this affidavit in the presence of my attorney, Rita Dave, Esq.; and Antonio Mallet's attorney, David Shanies, Esq.

The Murder of Michael Leadette

4. In the early morning hours of September 24, 1996, I witnessed the murder of Michael Leadette.
5. Michael Leadette ("Mike") and I had been friends for about two years.
6. Mike was in the used car business, and I understood that Mike sometimes sold stolen cars.
7. I sometimes worked as Mike's driver, following him to the places where he would meet with buyers and delivered cars to them. I never asked whether the cars were stolen, but I assumed they might be. After Mike delivered the cars to the buyers, I would drive him back where I met him.
8. On September 23, 1996, Mike asked me to help him deliver a Lexus; I said I would. I was going to follow Mike there and drive him back. Mike did not tell me who was buying the car.
9. That same day, I was with Mike at Alpine Motors, an auto salvage yard on Bruckner Boulevard in the Bronx. While I was waiting in the car, I saw Mike outside, talking to Antonio Mallet, who I recognized but did not know by name. When Mike got back in the car, he told me he had been talking to "Cee Lo." That is how I came to know Antonio Mallet by his nickname "Cee Lo."

10. After midnight on September 24, 1996, I met up with Mike to deliver the Lexus. He told me to follow him to the Waldbaums supermarket on Gun Hill Road in the Bronx.
11. I was driving in my car behind Mike. Mike was driving the Lexus. When we got near the Waldbaums, I got stuck at a red light that Mike made it through, so he was a bit ahead of me.
12. After the light turned green, I drove around to the back of the Waldbaums, and I saw Mike had parked the Lexus and was sitting in the car. There was another man standing next to the car, and a second man was walking toward the Lexus from a white car parked some distance away.
13. I stayed back to wait for Mike to finish his business. I was a good distance away from him, probably 150 feet or more.
14. Both of the men appeared to be black. Both men were dressed in dark clothing and wearing hats that were pulled down and blocking their faces. I could not make out either of their faces.
15. After a short time, I saw one of the men, who was wearing a hoodie, lean into the Lexus as if to look at something, and then pulled back out. A moment later, I saw him move his hand, and then I heard a pop. I did not actually see the gun.
16. After the gunshot, the two men ran to the white car, got in, and sped away.
17. After they were drove off, I drove fast up to the Lexus to check on Mike. I could see Mike was shot. His head was bleeding and his body was twitching.
18. I got back in my car and drove around the store to a payphone. I called 911 and told them where I was and that my friend had been shot.
19. Soon the police and paramedics came. The ambulance took Mike, and I went to the hospital. When I got to the hospital, I called Mike's brother and told him what happened.
20. Police detectives came to the hospital and told me they needed me to go to the station with them. I went to the police station.

The Interrogation

21. The detectives took me to a small room and started interrogating me.
22. They interrogated me for around 20 hours, maybe more. There were at least two detectives, who came in and out of the room, and sometimes more than

one detective was in the room with me. One of the detectives was a stocky, muscular white man, and another one was either white or Hispanic.

23. At the beginning, I told the detectives that I went to meet Mike at the Waldbaums and by the time I got there he was already shot. I did not want to get in trouble and I did not want to be involved with a stolen car or a murder.
24. The detectives had me write out a few different statements.
25. When I told them I did not see the shooting, they said I was lying.
26. Eventually I admitted to the detectives that I was there for the shooting and I heard the gunshot. But when I told them I did not know who the two men were, the detectives got very angry and said I was still lying.
27. They said I knew who did it and I was going to tell them or I was not going to walk out of the police station.
28. They said that I was going to go down for the stolen car if I didn't tell them who shot Mike, and they questioned me about whether I was involved the murder. They told me I could go to prison for many years – they mentioned a certain number (of years), but I do not remember how many.
29. I told the detectives I thought the men were both black, but that was all I could really say. I could not see their faces because they were far away, it was dark, and their hats were covering part of their faces.
30. The detectives said that was a lie. They yelled at me, cursed at me, and threatened to send me to jail. They also said my life was in danger because I witnessed the murder.
31. Over and over again, I told the detectives that I could not see who shot Mike. One detective got angry and at one point he got violent. The detective grabbed me and pulled me out of the chair I was sitting in. He slammed me up against the wall, which was painful and scared me.
32. The detectives said I was going to tell them who did the shooting or I was going to jail.
33. I told the detectives everything I could remember about that day, including that we saw Cee Lo at Alpine Motors earlier in the day.
34. After I mentioned Cee Lo, the detectives became totally focused on Cee Lo and insisted said he must have been the shooter.

35. The detectives said that if Mike was meeting with Cee Lo, he was probably making a deal to sell the car to him that night. I said it was possible, but I didn't know for sure. I told the detectives that I did not hear their conversation, so I did not know.
36. The detectives kept insisting that Cee Lo was the shooter and that I saw him shoot Mike. I said I didn't know, again and again, but the detectives kept threatening me and intimidating me.
37. This went on for hours and hours.
38. I was terrified, exhausted, and I thought there was no way out of this.

My Identification of Cee Lo

39. Eventually I realized the only way I would get out of this was to tell the detectives what they wanted to hear. I said OK, it was probably Cee Lo.
40. The detectives said probably is not good enough. I needed to say it was Cee Lo, for sure. I told them I could not see who the killers were, so maybe it was Cee Lo but I could not say for sure. Then they went back to yelling at me and threatening me.
41. Later on they told me that Cee Lo was a bad guy with a long criminal record. They said all I had to do was back up what they already knew. Eventually I said OK. I said I saw Cee Lo shoot Mike, even though that was not true.
42. After I went along with the story that Cee Lo shot Mike, the detectives relaxed and got friendlier. They had me write out a statement – possibly multiple statements – about Cee Lo.
43. Finally, they let me go.
44. Over the next few days, the detectives came back and talked to me more times. They had a picture of Cee Lo, which they showed to me. I recognized Cee Lo and I told them that.
45. The detectives took me to a lineup at a different precinct from the original interrogation, where I looked at people standing behind a glass window. I saw Cee Lo and I identified him as the person who shot Mike.
46. The detectives told me I was doing the right thing and that Cee Lo was definitely guilty. They told me that he was trying to run away and they caught him on his way to Virginia. They told me that there was a lot of evidence against him and they knew he killed Mike.

47. The detectives told me different things to put in my statements. I remember one of them was they told me to say that Cee Lo shot Mike two times. I told them I only heard one gunshot, but they said that there were definitely two gunshots and I needed to say that. So I put that in my statement.

The Trial

48. I don't remember how much time went by before the trial, by that time I was living in Connecticut and I thought the situation with Mike was all behind me.
49. At some point, the prosecutor in New York got in touch with me and told me I needed to come back and testify at the trial.
50. The detectives had told me that Cee Lo was out on bail and that I needed to cooperate with them or he might try to hurt me or my family. The detectives said Cee Lo had a long criminal record and he was a violent and dangerous person.
51. At one point while the trial was coming up, the detectives told me that they had a lot more evidence against Cee Lo and my testimony was just a small part of it. I asked them, if my testimony is such a small part, why do they need it? They said it was because I was the only person who was actually there when Mike got shot.
52. The detectives brought me to the district attorney and to the court for the trial. The detectives went over my prior statements with me and prepared me for my testimony.
53. The detectives also told me that they found out Mike only got shot one time, so I should say it was just one gunshot.
54. I went to court and testified against Antonio Mallet. I said that I saw his face and saw him shoot Mike in September 1996.
55. I said those things because I was scared and I believed the detectives would send me to jail if I didn't keep saying it was Cee Lo. I also believed that Cee Lo might be guilty because the detectives told me there was so much other evidence against him. And I thought that Cee Lo was a dangerous person and he was trying to kill me or hurt my family, because that's what the detectives told me.

After The Trial

56. After the trial I moved away and tried to leave that part of my life behind me. I stopped being involved in any criminal activity and I lived a good life.

57. Eventually I moved to Florida and started my own business, a trucking business (hauling cars).
58. I became very involved in the church and I consider myself a very religious person.
59. A few times over the years, people have contacted me about Antonio Mallet's case. I have spoken to one or two lawyers and an investigator. At first I told them I did not want to get involved.
60. Eventually I spoke to an investigator and he told me that my testimony was the only evidence against Antonio. That surprised me because the detectives had told me over and over again that they had so much other evidence against him.
61. The investigator asked me whether the detectives made any promises or threatened me to get me to say what I said. I told him yes, and that I never actually knew who shot Mike back in 1996. The investigator wanted me to sign an affidavit but I said no.
62. At the time, I was afraid of Antonio Mallet because the detectives had told me he was a dangerous criminal and he tried to hurt me before the trial.
63. A few months ago, I spoke on the phone to Antonio Mallet after he got out of jail. He told me that he was not mad at me but he hoped I would finally tell the truth.
64. I told Antonio Mallet that the detectives said they had a lot of other evidence against him besides my testimony. Antonio said that was not true, and that really the only evidence against him was my testimony. That was a big surprise to me because I believed the detectives had a lot of other evidence against him.
65. I told Antonio Mallet that the detectives told me that he was very dangerous and had a long criminal record. Antonio said that was not true either.
66. I told Antonio Mallet that the detectives said he was trying to hurt me and maybe my family. He said that was a lie, and that he never did anything like that.
67. I spoke to Antonio Mallet a few times and I realized that I had been lied to by the police about many things. I had always felt bad about what I said against Antonio because I knew I could not identify the shooter, but I was scared to tell the truth and I also thought that Antonio was dangerous and might hurt me.

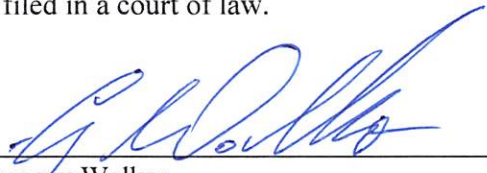
68. I feel guilty about my part in this case and I want to set the record straight. This affidavit is the truth, and I am willing to come to court to testify to it.
69. I want the court to know that I am coming forward only because I want to do what is right and set an example for other people who were put in a position of being forced to wrongfully accuse another person of a crime. I am a stronger person today and I can now stand up for what I always knew to be the truth.

I, Gregory Walker, affirm and declare this 6th day of July, 2019, under the penalties of perjury under the laws of the United States of America and the State of New York, that:

- (1) I have read the foregoing affidavit in its entirety;
- (2) The factual statements in the foregoing affidavit are true and correct;
- (3) As to any and each factual statement set forth above based upon information and belief, I believe that statement to be true;
- (4) The grounds for my belief are my personal observations and interactions; and
- (5) I understand that this document may be filed in a court of law.

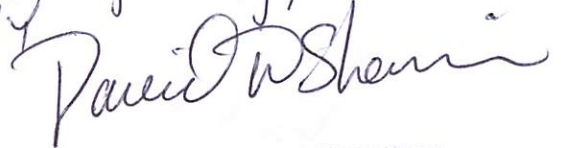
Executed on July 6th, 2019

NY, NY



Gregory Walker

Sworn to this 6th day of July, 2019
New York, NY



DAVID BRADLEY SHANES
NOTARY PUBLIC, State of New York
No. 02SH6160748
Qualified in Kings County
Commission Expires Feb. 12, 2023



EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

ANTONIO MALLET,

Defendant.

AFFIDAVIT

STATE OF NEW YORK, COUNTY OF BRONX:

I, KELVIN ROSADO, hereby affirm, under penalty of perjury, that the following statements are true:

1. I reside at [REDACTED] in the Bronx.
2. In 1996, I sold used cars in the Bronx. I knew Michael Ledeatte as a friend and customer. I also knew Antonio Mallet as a friend and customer.
3. I attended Ledeatte's funeral.
4. During the days following Ledeatte's death, Detective Joseph Nieves summoned me to the police precinct to speak about Ledeatte's death. I do not know for certain why Detective Nieves spoke to me. My best guess, however, is that he saw my name in Ledeatte's funeral sign-in sheet.

5. At the precinct, Detective Nieves insisted that I saw Ledeatte and Mallet arguing at Alpine Motors (a Bronx car shop). I told Detective Nieves that I never saw Mallet with Ledeatte at Alpine, which was the truth.

6. Detective Nieves continued to press me on the issue in an effort to get me to acknowledge that I had seen Mallet arguing with Ledeatte at Alpine. He yelled at me in order to intimidate me into adopting his account of an argument at Alpine.

7. I continued to tell Detective Nieves that I had never seen Ledeatte with Mallet at Alpine.

8. Detective Nieves then asked me where Ledeatte's garage was located. I informed him of the location, and he told me to direct him to the garage. Detective Nieves then put me in his police car and I directed him to the location.

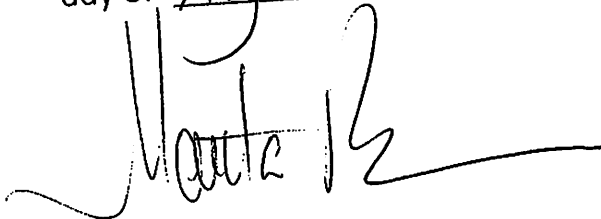
9. Once we arrived, Detective Nieves and his partner left me in the car. Detective Nieves then learned that my attorney had come to the precinct, so Detective Nieves drove me back to the precinct.

10. The police did not speak to me again about this case and neither did any lawyer for Mr. Mallet.

DATED: Bronx, New York


KELVIN ROSADO

Sworn to before me this 19
day of August 20 19



MARTA PEREZ
NOTARY PUBLIC-STATE OF NEW YORK
No: 01PE6305053
Qualified in Bronx County
My Commission Expires June 02, 2022

EXHIBIT D

INFORMATION		CASE NO.		DATE		TIME		PAGE	
PD 313-ORSA (Rev. 4-88-91)		ASSAULT 1		049		9-24-96		9-24-96	
Date of Orig. Report		Date Assigned		Case No.		Unit Reporting		Follow-Up No.	
9-24-96		9-24-96		BX. NIGHTWATCH					
Complainant's Name - Last, First, M.I.					Victim's Name - If Different				
LEDEATTE, MICHAEL (TENTATIVE)									
Last Name, First, M.I.					Address (Include City, State, Zip)				
Home Telephone					Business Telephone				
Position / Relationship					Sex / Race				
Date of Birth					Age				
Wanted					Arrested				
Weapon					Describe Weapon or Object (ive color, make, calibre, type, model, etc.)				
Arrested					Last Name, First, M.I.				
Sex / Race					Date of Birth				
Age					Height				
Weight					Eye Color				
Hair Color					Hair Length				
Facial Hair					NYSID No.				
Eyeglasses / Sunglasses					Clothing Description				
Nickname, First Name, Alias					Scars, Marks, M.O., Etc.				
(Continue in "Details")									
Wanted					Arrested				
Last Name, First, M.I.					Address (Include City, State, Zip)				
Sex / Race					Date of Birth				
Age					Height				
Weight					Eye Color				
Hair Color					Hair Length				
Facial Hair					NYSID No.				
Eyeglasses / Sunglasses					Clothing Description				
Nickname, First Name, Alias					Scars, Marks, M.O., Etc.				
(Continue in "Details")									
AREA WITHIN BOX FOR DETECTIVE / LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."									
Comp. Interviewed		In Person		By Phone		Date		Time	
Results: Same as Comp. Report - Different (Explain in Details)									
Witness interviewed		In Person		By Phone		Date		Time	
Results: Same as Comp. Report - Different (Explain in Details)									
Carvass Conducted		If Yes - Make Entry in Body Re. Time, Date, Names, Addresses, Results		Crime Scene Visited		If Yes - Make Entry in Details Re. Time, Date, Evidence Obtained			
Complainant Viewed Photos		Results							
Witness Viewed Photos		Results							
Crime Scene Dusted		By (Enter Results in Details)		Crime Scene Photos		By (Enter Results in Details)			
If Closing Case "No Results," Check Appropriate Box and State Justification in Details:									
C-1 Improper Referral C-2 Inaccurate Facts C-3 No Evidence / Can't ID C-4 Uncooperative Complainant C-5 "Leads" Exhausted									
DETAILS									
INVESTIGATION: ASSAULT 1									
SUBJECT: INTERVIEW OF DR. WEXSON EMERGENCY ROOM PHYSICIAN									
1- On this date at approx. 0250 hrs. the victim was brought into the Jacobi Emergency Room. Dr. Wexson and his staff administered medical treatment to the victim. Dr. Wexson informed the undersigned that the victim is found to have what appears to be two wounds to the back of his head (rear of left ear and side of right side of head area) no other wounds were found to be present on the body. The victim was presently on the machine to help him breathe and he is still alive.									
CASE ACTIVE									
CASE		DATE OPENED / CLOSED		IF ACTIVE, DATE OF NEXT REVIEW					
X ACTIVE		9/25		Case No.					
REPORTING OFFICER:		RANK DET.		SIGNATURE		NAME PRINTED MILIAN #5396		TAX REG. NO. 912531	
REVIEWING / CLOSING SUPERVISOR:		CASE CLOSED: C		ENTER DESIGNATION DR B		SIGNATURE		C.O.'s INITIALS	
<div style="display: flex; justify-content: space-between;"> <div>Choice 1 Choice 2</div> <div>Page 1 Page 2 Page 3</div> </div>									

1- COPY - ORIGINAL RECORDS SECTION 2- COPY - UNIT REFERRED TO 3- COPY - BUREAU - BUREAU OF

EXHIBIT E

COMPLAINT - FOLLOW UP		PAGE		OF		PAGE		
INFORMATIONAL		Crime	Pct	OCUB No	Complaint No	Date of This Report	14	
PD 313-081A (Rev. 4-89) 3:		ASSAULT	049			09/24/96	PERP 1	
Date of Orig. Report	Date Assigned	Case No	Unit Reporting	Follow-Up No				PERP 1
Complainant's Name Last, First, M.		Victim's Name - If Different		M/B19				15
Last Name First, M.		Address (Include City, State, Zip)		Apt. No				PERP 1
Home Telephone	Business Telephone	Position / Relationship		Sex	Race	Date of Birth	Age	PERP 1
Wanted		Arrested		Last Name First, M.		Address (Include City, State, Zip)		16
Rep No 1		Rep No 1		Rep No 1		Rep No 1		CHOIC 1
Rep No 2		Rep No 2		Rep No 2		Rep No 2		CHOIC 2
Rep No 3		Rep No 3		Rep No 3		Rep No 3		CHOIC 3
Rep No 4		Rep No 4		Rep No 4		Rep No 4		CHOIC 4
Rep No 5		Rep No 5		Rep No 5		Rep No 5		CHOIC 5
Rep No 6		Rep No 6		Rep No 6		Rep No 6		CHOIC 6
Rep No 7		Rep No 7		Rep No 7		Rep No 7		CHOIC 7
Rep No 8		Rep No 8		Rep No 8		Rep No 8		CHOIC 8
Rep No 9		Rep No 9		Rep No 9		Rep No 9		CHOIC 9
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Rep No 96		Rep No 96		Rep No 96		Rep No 96		CHOIC 96
Rep No 97		Rep No 97		Rep No 97		Rep No 97		CHOIC 97
Rep No 98		Rep No 98		Rep No 98		Rep No 98		CHOIC 98
Rep No 99		Rep No 99		Rep No 99		Rep No 99		CHOIC 99
Rep No 100		Rep No 100		Rep No 100		Rep No 100		CHOIC 100

EXHIBIT F

9/24-0535

DETIC and?

GREGORY WALKER

5/15/74

Before MURKINOTS.

When & to whom
was this made?

#6A-70

On the 9/23/96 Mike came to my house
about 11:50 AM OR 12:00 PM.
We spoke for a little while then I took him
to his house to get money to buy gas for the
car.

He went upstairs and got \$10. in quarters.
We went to the gas station and then to ALPINE
MOTOR LOCATED OFF BRUCKNER BLVD.

He got out and told me to come get him at
about 4:30 PM.

I went home got my baby mother and the
baby plus my sister in law and we all went
to JACOBI HOSPITAL.

~~I go~~

We got home about 5:30 PM which I then started
to wash my car.

Mike then pulled up in a cab and asked me
to pay for it. I then went next door to my
friend and took \$8. from him to pay the cab.
Mike and I started talking and he told me that
he had a car for sale. I told him that I
might know somebody that would be interested
in buying the car.

The car by the way was a 93 twin turbo.
My phone was having difficulties making calls
so he told me to take him home so I could
make the call. I took him home and made the
phone call. The number by the way was
(914) 725-7460. We got the answer machine
so I left a message.

We then started to watch the V.C.R. tape
which was about high speed chase.

We then went down stairs to my car.
While getting in my car he then

Told me that he would like for me to pick him up from Wall Baum about 10:30 PM.

I went home and finish cleaning my car. At about 10:45 PM or 11:00 PM I went there, waited for about 30 mins. to 45 mins. which I then left went up my block to see if he had already came. He was not there.

About 12:00 AM and 12:15 AM I went inside to have some food. I then went in my car and waited for a while. About 1:30 AM I called his house and got the answer machine.

I then got back in the car and went to location, he still was not there.

It was about 2:00 AM and I wanted to go home so I then drove around to the side parking lot, he was not there.

I then drove to the rear of the building to get to the other side, which I saw a car parked with both doors open.

I pulled up and saw that some one was in the car. I then got out to see that it was Mike. I called his name but no response. I then notice that he had blood leaking from the side of his head. His eyes was flickering & his body shaking. I then got back into my car and rushed to the front of the building which I saw two male & told them the guy said call 911 which I did and everything started from there.

G. M. M.

P.S. IT WAS ALSO THE FIRST TIME

SEEING MIKE IN THAT CAR (LEXUS)
I WAS NEVER INSIDE THE CAR WHICH
IS A BLACK LEXUS

G. Walker

I SWEAR THAT THE ABOVE
STATEMENT IS THE TRUTH.
I ALSO DID ~~AT~~ THE STATEMENT
VOLUNTARY

G. Walker
Det Joseph D. Meines
Jr. Grand Juror

EXHIBIT G

9-24-96

2:30pm

I GREGORY WALKER WROTE THE FOLLOWING STATEMENT AFTER BEING READ MY MIRADA RIGHT TO I GREGORY WALKER BACK UP MIKE LEDDETTE WHEN HE DELIVERED STOLEN CARS, ON AT LEAST FIVE ~~ALLEGED~~ OCCASIONS.

MY JOB WAS TO BACK MIKE UP FROM BEHIND SO THAT THE POLICE WOULD NOT IDENTIFY THE CAR HE WAS DELIVERING.

I BACK HIM ON THE FOLLOWING OCCASIONS.

(1) 8-9/96 ~~AAA~~ MIKE STOLE A 91 LEGEND & DELIVERED IT TO CUSTOMER

(2) 9/20/96 MIKE STOLE A 93 GS 300

(3) 6/26-27/ MIKE STOLE A MITSUBISHI GALANT FROM VALLHALA & DELIVERED IT TO THE BRONX

(4) 6-7/96 MIKE STOLE A 95 RED ACURA INTEGRA

(5) 4/96 94 ACURA LEGEND TYPE II ROSE-

HE BUYS CRASH CAR WITH CLEAN TITLE

GREGORY WALKER
DET. JAMES H. MENEZ
DET. JAMES H. MENEZ

EXHIBIT H

On Thursday 9/19/96 Mike and I went to Alpine. He then met up with a guy by the name of Celso.

Mike then came back over to where I was and told me that Celso needed a GS 300 which he was going to get for him that night.

He then showed me the car. We looked around the lot and he also showed me a Lexus Cruiser that he said Celso needed also, but Mike said that he didn't know how to ~~take~~^{steal} it.

The following day which is the 9/20/96

Mike and I met up and he told me that he had got the ~~Lexus~~ G.S. 300 and that he wanted to move it from off his block.

I told him that I wasn't leaving my house so he drove the car to Bronxville and took a cab back to his apt.

On Saturday Mike told me that Celso wanted him to strip the car and that he told Celso that he had no wear to strip it.

Mike had delivered 3 or more cars to Celso which Celso takes to fix cars that he buys from the crash lots.

Celso will order a specific car stolen, Mike then steals the car for Celso.

Mike steals about seven cars average per week.

On Sunday we did nothing.

On Monday Mike told me that Celso's friend might be taking the car. Later that night Mike told me that the car is sold and that he wanted me to follow him to Wallbaum to deliver it. I took Mike to where he had park the car. Mike got in the car which the door was already open.

* Mike does not know how to steal cars

THIS WAS VERY SUSPICIOUS BUT I WENT AND
MADE A U TURN AND WAITED FOR HIM.

HE FINALLY MOVED THE CAR AND MADE A U
TURN. WHEN HE PASSED I STARTED MY CAR TO
BACK HIM UP. THE LIGHT CAUGHT ME ~~SO~~
BUT MIKE KEPT ON GOING. WHEN I GOT
TO WALLBAUM I SAW A SMALL WHITE CAR
DRIVING FROM THE SCENE. I WENT UP TO MIKE
AND SAW WHAT HAD HAPPEN TO HIM. I THEN
DROVE TO THE FRONT AND DIAL 911.

I HAVE BACKED MIKE UP ABOUT 5 TIMES

I GREGORY WALKER

WROTE THE ABOVE STATEMENT
AFTER BEING READ MY MIRANDA
RIGHTS BY DET. NIENES

G. Walker

Det. Gregory Walker 2030 hrs 9/21/94
Det. Niene 2030 hrs 9/21/94

EXHIBIT I

9/24/96 10:30 PM

CELO HIRED MIKE TO STEAL A 93 GS 300 ①
SO HE COULD USE THE PARTS TO FIX
A GS 300 WHICH HE BOUGHT FROM
ALPINE.

MIKE TOLD ME THAT CELO ~~WAS~~ IS
GOING TO MEET UP WITH HIM AT WALLBAUM.
SO THAT HE COULD DELIVER THE CAR
TO HIM. MIKE DROVE AHEAD WHILE I BACKED
HIM UP FROM BEHIND. WHEN WE GOT TO
WALLBAUM, MIKE DROVE TO THE REAR OF
THE BUILDING. I STAYED A FEW CAR LENGTHS AWAY.
THERE WAS A WHITE CAR WAITING AT THE
CORNER OF THE BUILDING. I THEN SEE CELO
GET OUT OF THE CAR AND APPROACH MIKE.
I RECOGNISE CELO BECAUSE I MET HIM BEFORE.
HE THEN WENT TO THE PASSANGER DOOR
AND BENT INSIDE THE CAR WHILE MIKE WAS
SITTING IN THE DRIVER'S SEAT. I THEN
SAW A SECOND GUY APPROACH THE CAR.
HE WENT OVER TO THE PASSANGER SIDE AND
CELO WENT ON THE DRIVER SIDE. CELO THEN
BENT INSIDE THE CAR TO SEE WHAT MIKE HAD
BEEN DOING. HE SLOWLY PULLED OUT OF THE CAR
TOOK A GUN OUT AND SHOT MIKE TWICE IN
THE HEAD. I SAW THIS BECAUSE THE DOME
LIGHT WAS ON IN THE CAR. THEY THEN
RAN INTO THEIR CAR AND SPED OFF. I DROVE
UP TO MIKE AND DISCOVERED WHAT HAD
HAPPEN. I THEN DROVE TO THE FRONT OF
THE BUILDING MADE A 911 CALL AT WHICH
THE COPS CAME. I WROTE THE ABOVE AFTER BEING READ
MY MIRANDA RIGHTS

[Signature]
Det. Michael Farnon
Det. Muenz

EXHIBIT J

THE NEW YORK HOSPITAL
OUT-PATIENT DEPARTMENT

69 2286
F 2307135
PAT. ERICKA
135 136

Name ERICKA BRYANT History No. _____

This is to state that you attended our EMERGENCY ROOM
Clinic 9/23 1996 at 3 AM

Check one

☒ You have a return appointment for _____ 19____

☐ You do not need to return to this clinic.

Check one

☒ We believe you are able to resume work school but no vigorous play
for Mueck. has
stitches in mouth

☐ We believe you are not able to resume work
school

☐ It is anticipated that you will be able to resume work
school
about _____ 19____

DIRECTOR OUT-PATIENT DEPARTMENT

Per A. Cotton MD

EXHIBIT K

AFFIDAVIT OF GEOFFREY LOFTUS

Geoffrey Loftus, being duly sworn, deposes and says the following under penalties of perjury:

1. I prepared the attached 18-page expert report in this matter on behalf of Antonio Mallet.
2. The factual statements contained therein are true and represent my best understanding of the current science in the field.
3. If asked, I would testify at a hearing or jury trial to the facts, conclusions, and opinions contained in my expert report.



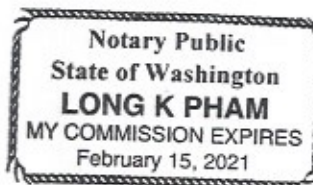
GEOFFREY LOFTUS

STATE OF WA)
COUNTY OF King) ss.:
)

On this 24 day of September, 2019, before me personally came Geoffrey Loftus, known or proven to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



NOTARY PUBLIC



Date September 23, 2019
To: Mr. David B. Shanies
From: Geoffrey R. Loftus
re: Report: *People v. Antonio Mallet*, 01907-02; Bronx County Indictment # 7180/96

I. Qualifications and background

My name is Geoffrey R. Loftus. I am Emeritus Professor of Psychology at the University of Washington in Seattle where I have taught since 1972. My area of expertise, in which I have been working for approximately 50 years, is human perception and memory.

My professional experience includes, among other things, co-authorship of 8 books and approximately 110 articles, presentation of approximately 160 invited addresses in 9 countries, 41 years of continuous grant funding from the National Science Foundation, the National Institutes of Health, and other funding agencies, assorted journal editing, assorted government grant reviewing, and assorted consulting. This experience is described more fully in my CV which can be found at, <http://faculty.washington.edu/gloftus/CV/CV.html>.

Over the past 37 years, I have been qualified and testified at trial as an expert in perception and memory in approximately 460 cases. These cases have been tried in superior courts in 55 counties across 16 states in the U.S. (including New York), in U.S. Federal courts in 11 cities, in U.S. Military court in Sigonella, Italy, and in Canadian court in Winnipeg, Manitoba.

I was asked to prepare this report by Mr. Shanies, who sent me copies of police reports, crime scene photos, and trial testimony excerpts.

II. Fact summary

On September 24, 1996 at around 2:50 AM, Gregory Walker reported to police that he had found Michael Ledeatte, shot to death, in the driver's seat of a stolen car in the parking lot of Walbaum's Supermarket, at 1750 Gun Hill Road, in the Bronx. In his initial

report, Mr. Walker made no mention of having seen the person who had shot Mr. Ledeatte.

Approximately two and a half hours after his initial report, Mr. Walker told NYPD Detective Nieves that he, along with Mr. Ledeatte, had been involved in the theft of a car, and that he had seen a small, white car — presumably the shooter's — driving away.

Approximately six hours after the shooting, Mr. Walker, who was still being interrogated by Detective Nieves, related that the stolen car's intended recipient had been the defendant, Antonio Mallet. Mr. Walker further related (a) that he and Mr. Mallet had interacted with one another prior to the shooting, (b) that it had been Mr. Mallet whom he had seen shoot Mr. Ledeatte in the head, twice,¹ and (c) that the alleged Mr. Mallet was accompanied by a second person during the shooting.

Mr. Mallet was subsequently arrested and identified by Mr. Walker, both in a photospread and in a live lineup.² Mr. Walker reiterated his identification of Mr. Mallet as the shooter at Mr. Mallet's trial. Mr. Walker's testimony, and that of police witnesses, also provided significant information regarding the lighting conditions at the supermarket that contradicted Walker's other testimony claiming that he was able to identify Mr. Mallet. That contradiction may not have been apparent at the time because, as I explain below, only later did the relevant science allow us to demonstrate the combined effects of distance and light on an observer's ability to discern details sufficient to make an identification under specified conditions. Mr.

¹ The police originally thought that Mr. Ledeatte had been shot twice and thus put it in Mr. Walker's statement. However, later forensic evidence indicated that Mr. Ledeatte had been shot only once. This detail illustrates that at least some of the facts in Mr. Walker's statement either (a) originated not with Mr. Walker but with the police or (b) were conveyed by police to Mr. Walker in such a way that Mr. Walker came to believe them to be true.

² Mr. Walker's identification of Mr. Mallet in these identification procedures required only that Mr. Walker be able to distinguish Mr. Mallet, with whom he was acquainted, from the fillers who presumably were strangers to him. Obviously such identifications were foregone conclusions, and accordingly I will not consider them further in this report.

Walker's testimony demonstrating the limitations on his ability to perceive and identify the perpetrators include:

- Mr. Walker testified that viewed the perpetrators from a distance later determined to be 140 feet.
- Mr. Walker testified that he could discern the color of the perpetrators' car, but he could not determine the make of the car.
- Mr. Walker testified that he could not identify the color of the gun, and that no light reflected off of the gun.
- Mr. Walker testified that he could not tell whether the second perpetrator did or did not have a beard or moustache.
- Mr. Walker testified that the area where the shooting took place was dark.

A police officer, Sergeant D'Heedene, who was on the scene that evening, testified that it was "dark back there," "dark by the car," and "dark in the whole loading area."

Based almost entirely on Mr. Walker's identifications, as he was the sole eyewitness, Mr. Mallet was convicted of murder.

On July 6, 2019, Mr. Walker completed an affidavit that cast serious doubt on his ability to have recognized the shooter as Mr. Mallet or anyone else—and, *ipso facto*, on the reliability of his identifications of Mr. Mallet as the shooter. Mr. Walker's statements in this affidavit included the following.

- During his interrogation, he asserted to police that he could not see the perpetrators' faces because they were too far away, because it was too dark, and because they were wearing hats that covered part of their faces.
- Nonetheless, police exerted enormous pressure on him to identify someone.
- When he mentioned Mr. Mallet to police, they decided that Mr. Mallet had been the shooter and exerted further pressure on him, Mr. Walker, to agree with them and identify Mr. Mallet.

II. Scope of and rationale for testimony

Apparently the jurors at Mr. Mallet's trial believed that Mr. Walker's initial view of the shooter was sufficiently good that his identifications of Mr. Mallet were reliable—and therefore used these identifications, at least in part, as bases for convicting Mr. Mallet. If the factfinder were provided relevant scientific information about human perception and memory—and about application of such information to the facts of Mr. Mallet's case—the factfinder would be able to evaluate Mr. Walker's identifications of Mr. Mallet in a clear, organized, and principled fashion that would likely have resulted in a different outcome.

Unfortunately, that scientific information could not have been presented to the jurors at the time of Mr. Mallet's trial, because it did not yet exist. I did not begin the research on the effects of distance and lighting on perception that would have allowed me, or another scientist, to give such testimony until 1999, and it was not completed until 2004, well after Mr. Mallet was convicted. Such scientific information about the virtual impossibility of Mr. Walker's ability to perceive and identify the shooter, had it existed, could most clearly and efficiently have been conveyed to the jury via testimony from an expert in human perception and memory.

Given information that has been acquired since the crime—in particular, given the information provided by Mr. Walker in his July 6, 2019 affidavit—it appears likely that Mr. Walker knew when he testified that he had not been able to see the shooter alleged to have been Mr. Mallet sufficiently well to have reliably identified Mr. Mallet (or anyone) at any time during or subsequent the shooting. Accordingly, it appears that Mr. Walker's identification of Mr. Mallet at trial was not based on his memory of the shooter and that his assertion that it *was* so based was untruthful. However, I will assume for purposes of this report that Mr. Walker *did*

believe at trial that Mr. Mallet had been the shooter. I do so because such an assumption would have been consistent with what everyone, including the factfinder at trial, believed at the time.

Were I to testify at a trial or hearing in this matter, I would discuss, at minimum, factors relevant to human memory that comprise the numbered list that appears below. Before going through these factors however, I would like to clarify two issues, the first involving what conclusions I do and do not make when I testify, and the second involving the fundamental rationale for having a memory expert testify to begin with.³

First, when I testify, I do not, as a matter of course, issue judgments about whether a particular witness's identification of a suspect or a defendant in case at hand is correct or incorrect.⁴ Accordingly, I do not interview or otherwise analyze witnesses. Instead, I provide information to the jury about the scientific bases of various relevant aspects of perception and memory. The hope is that jurors can eventually use this information as a tool to help them carry out their job of assessing the reliability of, and concomitantly, the weight to be given to, whatever eyewitness memory is relevant in the case. The connection between my testimony and the facts of the case is often delineated via hypothetical questions from the defense attorney and/or from the prosecuting attorney. Normally, I do not mention case participants by name when I testify; to the degree that I do so in this report, it is only for the purpose of articulating the relevance to this case of the testimony that I could provide at a trial or hearing.

³ I note that these issues apply not only to me, but to any memory expert who might have testified at Mr. Mallet's trial, as discussed in more detail elsewhere (e.g., Buckout, 1974; Loftus & Ketcham, 1991; Penrod & Cutler, 1995).

⁴ A witness's identification of a defendant is correct if and only if the defendant is guilty. Thus, commenting on the correctness of the witness's identification would, *ipso facto*, be tantamount to commenting on the defendant's guilt or innocence. This would be entirely inappropriate: the legal rules of evidence, scientific ethics and basic logic all agree that judgment of a defendant's guilt or innocence should, from any perspective, be based on *all* case evidence, of which eyewitness identification is only a part.

The second issue concerns, as noted, the fundamental rationale for having a memory expert testify. The central issue discussed by a memory expert is that, contrary to common sense, a confident witness need not be an accurate witness. This issue is gradually coming to the attention of the judicial community, largely because of the increasing number of cases in which convicted but eventually exonerated individuals are found to have been originally convicted on the basis of confident, yet false identifications of the defendant at trial.⁵ This problem was cogently described in a memo issued by former New Jersey Attorney General John Farmer, wherein he noted that it is important to guard against procedures which may invest a witness with a false sense of confidence. Farmer pointed out that, “Studies have established that the confidence level that witnesses demonstrate regarding their identifications is the primary determinant of whether jurors accept identifications as accurate and reliable.” This is certainly correct—see, e.g., Penrod & Cutler, 1995; Cutler, Penrod, & Dexter, 1989—and a memory expert is in a position to alert jurors to situations which, on the basis of scientific studies, are known to lead to such a false sense of witness confidence when witnesses identify a defendant or recount any other memory of the crime in question.

It is important first to establish *why* a confident witness sways jurors. The reason, quite simply, is that in most of normal, everyday life, high confidence *is* predictive of high accuracy. Therefore, it makes sense that an average juror would believe intuitively that high confidence is *always* associated with high accuracy, or at least that the average juror should use such predictive power as a default assumption in evaluating the credibility of a witness’s

⁵ See, for example, Scheck, Neufeld, & Dwyer (2000) for an assessment of this issue as of 18 years ago. Useful supplements to the falsely-convicted database can be found in Thompson, Cotton & Torneo (2009), Garrett (2011), as well as the Innocence Project’s web site: <https://www.innocenceproject.org/causes/eyewitness-misidentification/>.

memory.

However, contrary to intuition, such predictive power can break down, and a great deal of scientific research has delineated the circumstances under which such a breakdown occurs. These circumstances include (1) an original event that does not lend itself to a witness's being able to easily form an accurate memory of a criminal's appearance (e.g., seeing a criminal under conditions of darkness) along with (2) some form of suggestive *post-event information* that would bias the witness to reconstruct his or her memory in some fashion (e.g., prior knowledge of a suspect's appearance, or being exposed to the suspect's appearance in the course of identifying the suspect in an identification procedure). Under such circumstances, the witness is inclined to rehearse this reconstructed memory of the original event (in this case, the homicide) such that the witness's memory becomes strong and confidence-inducing. Accordingly, although nonintuitively, the witness's confident identification of the suspect—now the defendant—at trial is based not, as the witness believes, on original information about the perpetrator's appearance acquired at the time of the original crime, but on potentially inaccurate, post-event information acquired about the defendant at various times subsequent to the trial.

While this combination of circumstances is rare in most peoples' experience, it is relatively common in crimes such as the homicide that is the focus of this case. It is also clear, based on common sense, on confirming laboratory studies, and on outcomes of real-life trials, that a highly confident eyewitness can be quite persuasive to a jury. Accordingly, a central theme that runs through testimony provided by an expert in perception and memory is an account of these scientifically understood circumstances under which confidence should not be taken as a predictor of accuracy. The correspondence of these circumstances to the facts of the case at hand are often underscored via hypothetical questions from the defense attorney and/or the

prosecuting attorney.

Were a factfinder to hear such expert testimony, it would be equipped to evaluate in a reasonably informed fashion the implications of the in-trial confidence that Mr. Walker displayed in his identification of Mr. Mallet as the shooter. More generally, in order to evaluate the weight that should be accorded a witness's identification at trial, a jury must consider what prior circumstances are consistent with a witness's recounting a strong, confident memory that, if true, would be strongly favorable to the prosecution case and detrimental to the defense case.⁶ There are two possibilities. The first is the one that is most intuitively obvious to lay people including jurors: the witness's confidently described memories are accurate reflections of what actually happened and should thus be given heavy weight in their evaluation of the defendant's guilt or innocence, i.e., that the defendant is likely the person who committed the crime and was viewed by the witness. The second possibility is that the defendant is *not* the person who was viewed by the witness, but that the witness nonetheless expresses a strong, honest, confident belief that he was. This second possibility is not at all obvious to jurors. However, decades of scientific research have demonstrated the circumstances under which it can occur. Because, as I will describe below, such circumstances characterized this case, it would be very useful to explain them to the factfinder.

Finally, I wish to emphasize that any testimony on my part which suggests unreliability on the part of an eyewitness who identifies some defendant should *not, ipso facto*, be taken to imply that the defendant is innocent—it implies only that the trier of fact should view the eyewitness evidence with appropriate caution in deciding whether or not to convict the

⁶ Or vice-versa as in, e.g., *State of Alaska v. Korakahn Phornsavanh* 3AN-13-06468CR, wherein I consulted and testified at trial for the State about the same general issues that I discuss in this report.

defendant.

III. Testimony Specifics

Bearing all this in mind, the factors that would comprise my testimony in a trial or other factfinding proceeding in Mr. Mallet's case are those described in the numbered list below. I note for the record that all information that I discuss is generally accepted in the field of Psychology (see, e.g., Kassin, Tubb, Hosch, & Memon, 2001; Schmechel, O'Toole, Easterly & Loftus, 2006). The information informing this field of science has been gathered over the past century, primarily using controlled laboratory research as a means of identifying basic scientific laws. Such research has typically been funded by research grants from national agencies which, in the U.S. for example, would include the National Science Foundation, and the National Institutes of Health, along with military research arms such as the Air Force and the Naval offices of scientific research. The results of such research studies have been published in peer-reviewed journals mainly in the fields of Biology, Computer Science, Neuroscience, and Psychology, as well as in the premier cross-discipline journals, principally *Nature* and *Science*.

Generalization of laws formulated under scientifically controlled settings to the world outside the laboratory comes about in part by observations of real-life incidents that bear on the conclusions which issue from the laboratories. An example of such real-life phenomena comes, as noted earlier, from cases of eventually exonerated individuals convicted on the basis of highly confident, yet demonstrably false memories expressed by witnesses at trial. There are many other such instances.

1. **A general theory of perception and memory.** There exists a longstanding theory that describes how perception and memory operate. This theory has been described in many places, initially by Neisser (1967); see also Neisser & Hyman (1999), and

applications of it to legal issues have been described elsewhere (e.g., Busey & G. Loftus, 2007; G. Loftus, 2010a, 2010b; E. Loftus & Doyle, 1997). Briefly, three points are most relevant to legal issues. First, initial memories are fragmented, disorganized, and incomplete. Second, memory changes over time in such a way as to become more detailed, more coherent, more organized, and more complete. Third, such memory change may occur in such a way that, unbeknownst to the witness the memory is—critically and nonintuitively—*not* necessarily becoming more accurate; hence the witness ends up with an eventual memory that is strong, detailed, real-seeming, and confidence-inducing, but nonetheless incorrect in important respects. Examples of such memories abound, both in the scientific laboratory and in everyday life. A striking and directly relevant class of such memories was alluded to earlier: those of eyewitnesses who strongly and confidently—yet falsely—identify as perpetrators, defendants who are later shown unequivocally to *not* have been the person whom the witness saw commit the crime.

Relevant to the case at hand is that Mr. Walker likely began with fragmented and incomplete initial memories of the shooter later alleged to have been Mr. Mallet—and yet identified Mr. Mallet at trial based on a reconstructed false memory that included a strong representation of him as the shooter. The rationale for such a hypothesis is developed in what follows.

2. **Circumstances under which memory fails, and the consequences of memory failures for eyewitness testimony.** There are three such circumstances. The first involves factors operating at the time of the original event that diminish or preclude a witness's ability to accurately memorize the perpetrator's appearance (e.g., limited time or inadequate attention to what will eventually be important information). The second involves events

occurring during the *retention interval* that intervenes between the time of the original event and the time that the witness is called upon to recollect something about the event (e.g., for any of a variety of reasons, a witness is induced to reconstruct his or his memory on the basis of post-event information whose accuracy is itself in question). The third involves the procedures by which information is elicited from the witness's memory (e.g., information about a perpetrator's identity may become available to a witness as a result of suggestive and/or biased interview and/or identification procedures).

3. **Effects of low lighting on perception and subsequent memory.** Clearly illumination is relevant, as the homicide took place at 2:50 AM; moreover, evidence described above indicated that the scene was very poorly lit, i.e., that ambient lighting that could have illuminated the shooter's appearance was largely absent. Thus, I would provide expert testimony about the consequences of attempting to perceive and memorize critical information, such as an perpetrator's appearance, under such poor lighting conditions.

4. **Different visual systems are used depending on the lighting conditions.** Under conditions of good lighting, such as daylight or in a well-lit office, human vision is accomplished using the *photopic visual system*, which allows humans to perceive differences in color and fine details. Under conditions of sufficiently low lighting, such as that present at the homicide scene, vision is accomplished using the *scotopic visual system*, which is incapable of detecting either color or the fine detail that is necessary to encode a person's appearance.

These limitations on initial perception imply concomitant limits on the amount and kind of information about the perpetrator's appearance that can be initially placed into memory. While there are scientific laboratory studies that can demonstrate precisely the amount

of luminance required to switch from scotopic to photopic vision, in most city settings at night it will depend on the amount and direction of light in the specific area, the color of the concrete, and the existence other reflective surfaces. In order to give testimony in these situations, I often have to infer from testimony given by the witnesses or go observe the space myself, having an assistant stand in the area to see whether *my* vision can observe color and fine detail or whether it is using my scotopic vision system. Mr. Walker's and Sergeant D'Heedene's testimony strongly suggest that the lighting conditions were sufficiently poor, that *scotopic* vision was being employed. Specifically, as noted earlier, Mr. Walker testified that he could not tell whether the second individual had facial hair or not, could not determine the make of the car he perceived as white, and could not discern the murder weapon. Sergeant D'Heedene repeatedly called the lighting conditions "dark."

5. **Effects of distance on visual perception.** Mr. Walker saw the shooter from a distance of 140 feet. This is a sufficient distance that perception of a person's appearance would be seriously impaired, and a discussion of it is warranted.

It is, of course, a matter of common sense that, from longer distances a witness is less able to perceive details of some event. Research reported by Loftus & Harley (2005) has allowed quantitative precision about the amount of the information loss attendant to viewing from any particular distance, along with the ability to prepare a visual demonstration of such loss.

If the viewing is at night, scotopic viewing not only creates its own set of perceptual limitations (see Points 3-4 above), but it also interacts with distance, inflating the daylight effect of distance by approximately a factor of 3: that is, for example, seeing a person from a distance of 140 feet at night would engender the same loss of information attributable to

distance as seeing the person from a distance of $3 \times 140 = 420$ feet during the day.

The figure below shows an individual blurred to represent information loss attendant to Mr. Walker's having viewed the shooter at night from a distance of 140 feet (note also that the figure is in grayscale, reflecting, as described in Points 3-4 above, the loss of color information at night). None of the research that would make the below demonstration of the visual loss given the lighting and distance condition was available at the time of Mr. Mallet's trial. In this figure, it is evident that the loss is substantial; the detailed facial features that are normally used for recognition are not available.



Finally, it should be noted that the figure shows the deleterious effects of distance *only*; that is, it presupposes that all other factors that might potentially diminish memory quality at the time of some identification procedure—such as lack of attention on the witness's part or a lengthy

passage of time between the event in question and the identification procedure—are optimal. To the degree that such other factors are suboptimal the Figure-1 demonstration *overestimates* Mr. Walker’s ability to have perceived and memorized the shooter’s appearance.

6. **Definition of and consequences of unreliable identifications.** So far in this report I have been using the term “reliability” somewhat loosely and intuitively. Were I to testify at a trial or other factfinding proceeding in this case, I would provide the factfinder with a more formal definition of when an identification by a witness of a suspect or a defendant should be construed as reliable versus unreliable.

In particular, I would emphasize that any identification of a suspect or defendant by a witness can be construed as reliable only if, based on that identification, one can conclude that there was a strong match between the witness’s memory of the perpetrator whom he saw commit the crime on the one hand and the identified suspect’s or defendant’s appearance on the other hand. Logically, if an identification is deemed to be unreliable it should not be used as evidence for assessing a defendant’s guilt or innocence.

If the factfinder in this case had access to this information, it would essentially have no choice but to conclude that Mr. Walker’s identifications of Mr. Mallet—both his initial assertions to the police that Mr. Mallet was the shooter and his identification of Mr. Mallet as the shooter at trial—were profoundly unreliable. The logic here is straightforward. The circumstances under which Mr. Walker saw the shooter were poor, as described in Points 3-5 above. This should suffice for the finder of fact to understand that Mr. Walker could not possibly have begun with a clear memory of what the actual shooter looked like. Given this proposition, it would have been impossible for there to have been a strong match between Mr. Walker’s demonstrably incomplete memory of the shooter and *anyone*—including Mr. Mallet.

V. References

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